

The Criminal Justice and Human Services Systems: A Coordination Handbook

“Working Together to Address Issues Concerning
Persons with Developmental Disabilities”

Second Edition, 2006

First Edition, 1995

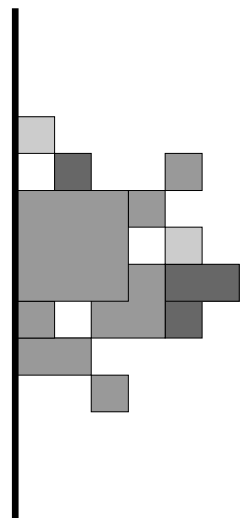
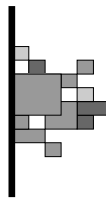


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Introduction and Acknowledgements



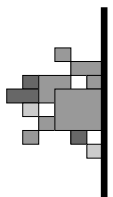
“As is true in most areas of disability rights law, equality does not necessarily mean equal treatment. In other words, persons with disabilities must, at times, be treated differently from others in order to ensure protection of their rights and to ensure equal opportunity to benefit from services. Persons with mental retardation cannot be ‘processed’ exactly like others who come in contact with our criminal justice system, because, for them, it may be a system they do not understand or a system that does not understand them.” Richard Thornburg, Attorney General of the United States. Speech given to the Presidential Forum on Offenders with Mental Retardation and the Criminal Justice System, September 15, 1989.

The focus of this handbook is on **adults (ages 18 years and older) with developmental disabilities *who come in contact with the criminal justice system.***

Developmental Disability is defined in South Dakota Codified Law (SDCL) 27B1-18 as follows:

“A developmental disability is any severe, chronic disability of a person that:

1. Is attributable to a mental or physical impairment or combination of mental and physical limitations;
2. Is manifested before the person attains age twenty-two (22);
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in **three or more** of the following areas of major life activity: **self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency;** and
5. Reflects the person’s need for an array of generic services, met through a system of individualized planning and supports over an extended time, including those of life long-duration.”



Distinguishing Mental Retardation/Developmental Disabilities from Mental Illness

It is important to stress here, as well as throughout this handbook, that people with developmental disabilities are very different from people with mental illness although some people with developmental disabilities may have a co-occurring mental illness. Their needs for support and for services are, therefore, also different.

Mental Retardation/Developmental Disabilities

- ❑ Is not an illness, although it can be a result of an illness during childhood.
- ❑ Is first manifested during childhood.
- ❑ Is not disturbance of thought. The thoughts of persons with mental retardation are limited by their cognitive disabilities. They are not irrational or inconsistent. Rather, they are less developed, less conceptual and less abstract.
- ❑ Require educational, social and other services and supports usually throughout the person's life.

Mental Illness

- ❑ Is an illness that is often treated with medication.
- ❑ May occur at any stage in a person's life with acute, more severe episodes that may occur and then subside.
- ❑ Involves disturbances in thought processes and emotions.
- ❑ Persons with mental illness usually require treatment that is often medically based. With treatment, they may be restored to health.

Because professionals in the mental health system do not necessarily have expertise and experience in working with and evaluating people with developmental disabilities, it is important that those using this handbook ensure that professionals with expertise and experience in working with people with developmental disabilities are involved at the outset when a person suspected of having a developmental disability becomes involved with the criminal justice system.

Over the past 40 years, citizens of South Dakota have significantly changed their understanding of people with developmental disabilities regarding what they can accomplish and the supports and services necessary to ensure they have opportunities to become contributing members of their communities. Today, services are available to support people with developmental disabilities to live in or near their home communities; to work in jobs within their communities; to participate in the social and recreational life of their communities; to exercise their full rights as citizens and to receive services from generic service agencies that provide assistance to any citizen in need.

This positive change has provided tremendous opportunities for persons with developmental disabilities to be empowered to make choices and decisions that affect the quality of their lives. At the same time, these positive changes have increased the possibilities that a small number will have contact with the criminal justice system.

This Handbook is designed for use as a reference for staff working in the developmental disabilities and the criminal justice systems in assuring citizens with developmental disabilities are treated fairly and appropriately when they become involved with the

criminal justice system and as an aid in cooperative training activities among the human services and criminal justice systems.

The **goals** of this Handbook include:

- Professionals in the developmental disabilities system will be more knowledgeable about the criminal justice system.
- Professionals in the criminal justice system will be more knowledgeable about the developmental disabilities community and state systems
- Professionals within both systems who support/are available to support people with developmental disabilities who come in contact with the criminal justice system will find the Handbook helpful and easy to use.
- The criminal justice professionals will recognize and better understand the difference between developmental disabilities and mental illness and the possible co-occurrence of mental illness and developmental disability.
- Encourage the use of the Individual Justice Plan (IJP) consistently and appropriately by the developmental disabilities and criminal justice systems.
- Create community awareness with the potential development of Individual Justice Teams within communities throughout South Dakota.

This Handbook is organized into five chapters:

1. Overview of Agencies/Organizations within the Human Services and the Criminal Justice Systems
2. Principal Stages within the Criminal Justice System
3. Individual Justice Planning Process
4. Definitions of terminology from Human Services and Criminal Justice Systems
5. Resources available within the Human Services and Criminal Justice Systems

Two other areas to consider that are not discussed in depth in this Handbook include: 1) educating persons with developmental disabilities to prevent their becoming involved with the criminal justice system; and 2) persons with developmental disabilities as victims.

Obviously, the best strategy regarding persons with developmental disabilities is to prevent the person from ever committing acts that bring them into contact with the criminal justice system. It is important that education for the person with developmental disabilities begin during their school years and continue through adult services. These programs should stress the importance of laws, the reasons for the laws, the responsibility of each of us not to break the laws, what consequences we all face when and if we break those laws, clear information regarding police arrest procedures, the individual's rights, what attorneys and courts do, and what happens within the various detention (correction) facilities. The education/training programs that should be a part of prevention activities offer an excellent opportunity to involve agencies and organizations from both the human services and criminal justice systems. Encouragement of law enforcement personnel and/or

attorneys to be a part of an education program for persons with disabilities on the consequences of criminal activity will benefit the person with a disability and the professional staff from both systems.

People with developmental disabilities are often very vulnerable to exploitation and victimization by others. Often people with developmental disabilities have low self-esteem, lack the ability to make and keep friends, and their often-limited intelligence makes them easy targets for others. Problems will many times develop when a person with a disability is victimized. The person may, in fact, not know if or how to report the fact that he/she was victimized. If the person does report the crime, many times the police will have difficulty understanding or taking the accusation(s) seriously. Prosecutors will often experience difficulty having the person's testimony accepted effectively in court. This problem also becomes an issue when the person with a developmental disability is asked or required to testify as a witness to a crime.

Professionals from both the human services and criminal justice systems should take special steps and pay much greater attention to situations where a person with a disability has possibly been victimized. Expanded opportunities for cross training and communication between the two systems will develop personnel within both systems who will better ensure that persons with disabilities are not treated as devalued members of society. This expanded communication and training will increase the likelihood that individuals committing crimes against persons with disabilities will be appropriately charged, convicted, and punished. Any opportunity that allows personnel from the criminal justice system to interact with and better understand people with disabilities will certainly improve their ability to effectively and fairly relate to those people if they must deal with them within the criminal justice context.

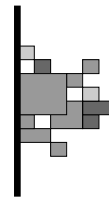
Members of the Criminal Justice and Human Services Workgroup, coordinated by the South Dakota Council on Developmental Disabilities, contributed time, expertise and information for the revision of the Handbook.

The original Handbook was completed by the USD Center for Disabilities through a grant from the SD Council on Developmental Disabilities in the mid-1990's to the Center for Disabilities (formerly known as SD University Affiliated Program), Department of Pediatrics, Sanford School of Medicine of The University of South Dakota.

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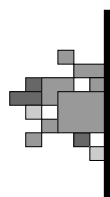
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Chapter 1



An Overview of the Agencies & Organizations Within the Two Systems

In any effort to improve coordination between the human services and criminal justice systems, it is most important to gain an understanding of what we mean when we talk about these two systems. A better understanding of the two systems, along with improved knowledge of the resources offered by the systems, will better allow for implementation of a coordinated planning process known as the **Individualized Justice Plan**. This planning process is described in detail in Chapter 3. Contact and website information for agencies and organizations listed in this chapter can be found in Chapter 5.



The Human Services System

A broad description of “human services” includes health, social, and educational services designed to provide assistance to citizens of South Dakota that promote their health, personal growth, development and self-sufficiency. For purposes of this handbook, we will discuss “**generic**” services, which refer to those human services available to all eligible South Dakota citizens regardless of whether or not they have a developmental disability; and “**specialized**” services, which refer to those human services specifically designed to meet the needs of persons with developmental disabilities. It is important to understand that a person with a developmental disability may be eligible to receive services, supports or assistance from both specialized and generic human service agencies and organizations. When planning services and supports for a person with a developmental disability, one should never assume that an agency or organization would not be an appropriate resource. A major purpose of the handbook is to make it easier for individuals to ask the right questions of the right people, agencies and organizations.



Generic Services

Generic services have become increasingly important to persons with developmental disabilities as they gain greater access to the community and become valued and productive community members. The following generic services may be of assistance to a person with a developmental disability.

South Dakota Department of Social Services

When financial difficulties, physical or mental disabilities, or other problems threaten the independence of a South Dakotan, the Department of Social Services is there to help. The South Dakota Department of Social Services impacts the lives of more than one out of every seven South Dakotans. Individuals or families experiencing difficulties may be eligible for help from one of the department's programs.

Adult Services & Aging (ASA) - ASA programs and services help adults with disabilities and older persons who are financially eligible for the programs to continue to live in their own homes. ASA promotes in-home and community-based services to prevent or delay premature or inappropriate institutionalization. Services that are either purchased or directly provided by office staff include: a) adult protection; b) in-home case management; c) health-related services for adults; d) homemaker services; e) placement services for adults; f) services for elderly deaf; g) respite care services; h) adult day care; and i) medical review of institutional care.

Crime Victims Compensation - Provides monetary compensation to victims of violent crimes.

Domestic Abuse Program - Provides shelter and support services for victims of domestic abuse and sexual assault.

Energy Assistance and Weatherization - Helps low-income families pay their heating bills and weatherize their homes.

Food Stamps - Helps low-income people buy the food they need to remain healthy.

Medical Eligibility - Determines if people are eligible for Medical Assistance (Medicaid). One of the major ways for a person with a developmental disability to become eligible for the state's Medicaid Program is by becoming eligible for the Federal SSI (Supplemental Security Income) program. The SSI Program is discussed under the Federal Social Security Program.

Medical Services - Covers health care services provided to low-income people eligible for Medical Assistance (Medicaid).

This is a very important office for people with developmental disabilities as it is the office designated to administer South Dakota's Medicaid (Title XIX of the Federal Social Security Act) reimbursement activities. For Medicaid eligible individuals, this office purchases the following services using a combination of state and federal funds: a) physician services; b) adult dental services; c) in-patient and out-patient hospital services; d) prescription drugs; e) lab and x-ray; f) home health services; g) optical services; h) prosthetics; i) ambulance services; j) podiatry services; k) medical equipment; l) family planning services; m) personal care services;

n) chiropractic services; o) early periodic screening; p) supplemental medical insurance; q) nursing facility care; r) intermediate care services for persons who have mental retardation or other developmental disability; s) home and community-based care services for persons with a developmental disability; t) clinic and mental health services; and u) state institution services for people who are aged or have psychiatric disabilities.

Rx Access (Medication Assistance) - Helps people gain access to drug company assistance programs which supply prescription medications at low or no cost.

Sales Tax of Food Refund Program - Provides refunds of sales tax payments on food to low-income residents.

Temporary Assistance for Needy Families (TANF) - Provides temporary cash assistance to needy families.

South Dakota Department of Human Services (DHS)

This agency's mission is to promote the highest level of independence for all individuals regardless of disability or disorder.

Division of Alcohol and Drug Abuse (DADA) - Among the numerous activities of this agency, the one that would most affect persons with a developmental disability would be its ability to assist in referring and paying for residential alcohol and drug treatment. This service would be available if an alcohol or drug use problem is identified by a community-based alcohol and drug treatment provider and the person does not have the funds to pay for the residential treatment.

Division of Mental Health (DMH) - This agency accredits and contracts with eleven (11) private nonprofit community mental health centers. Mental illness and developmental disabilities **are not** the same, but a person with a developmental disability may also experience a mental illness. One of the priority needs focused on by the Division is to ensure quality mental health services to individuals with multiple diagnoses including persons with a developmental disability or mental illness.

Division of Rehabilitation Services (DRS) - This agency assists individuals with disabilities to obtain employment, economic self-sufficiency, personal independence and full inclusion into society. Services may include, but are not limited to, assessment, vocational counseling, work skills, personal support services, job site accommodations and job placement. Other services include: independent living, attendant care, deaf services, assistive technology, supported employment and traumatic brain injury services.

Division of Services to the Blind & Visually Impaired (SBVI) - This agency provides individualized rehabilitation services that result in optimal employment and independent living for people who are blind or visually impaired.

Human Services Center (HSC) - This state facility provides persons who are mentally ill or chemically dependent with effective, individualized professional treatment that enables them to achieve their highest level of personal independence in the most therapeutic environment. Individuals are admitted to HSC by voluntary application for admission or through an involuntary commitment process.

South Dakota Department of Health, Community Health Services

This office delivers professional nursing and nutrition services and coordinates health-related services to individuals, families and communities across the state. Services include education and referral; immunizations; communicable disease testing, counseling and education; developmental screenings; prenatal and post-partum home visits; case management of pregnant women; WIC; family planning, nutrition counseling and education; screenings for vision, hearing, blood pressure, blood sugar, and hemoglobin; and many more.

South Dakota Department of Education, Office of Career and Technical Education

Post-secondary technical institutes within the state may be a resource for certain individuals with a developmental disability. Adult vocation education provides the opportunity to acquire or upgrade vocation skills. If the individual is at least 16 years of age and has a high school diploma or GED, these programs may be of assistance in meeting needs of a person with a developmental disability.

South Dakota Department of Labor

This department handles the Workforce Investment Act (WIA) programs in South Dakota. The WIA is an employment and training program designed to provide services that will increase skills for adults and youth that will result in employment and an increase in earnings. WIA offers education and job training programs that can help in overcoming employment barriers. The Department provides direct linkages with Career Centers, Unemployment Insurance, and Labor Market Information statewide.

Community Mental Health Centers

There are eleven (11) community mental health center organizations located in communities throughout the state and each serve a geographical area. The community mental health centers provide mental health services including outpatient, evaluation and treatment, psychiatric rehabilitation, residential services, case management, pre-hospitalization screening, twenty-four hour emergency care, liaison services, and

consultation and education activities. The mental health centers might be valuable resources for people with a developmental disability who have come in contact with the criminal justice system.

Independent Living Centers

There are 4 independent living centers with outreach offices located throughout the state. Services include information and referral, independent living skills training, peer counseling, individual and system advocacy, housing services related to securing housing or shelter, and home modifications and adaptive devices. To be eligible for services a person must have a significant disability. Home modifications and adaptive devices are provided based on economic need.

Relay South Dakota

Relay service provides telephone accessibility to people who are deaf, hard of hearing or have speech impairments. Relay South Dakota is available 24 hours a day, with no restrictions on the number of calls placed or their length. To place a call from anywhere in South Dakota, dial 7-1-1 or dial toll-free (800) 877-1113 from anywhere outside of South Dakota.

Social Security Administration

Eligibility for federal Social Security programs such as Supplemental Security Income (SSI) may often be the key to eligibility for other federal/state programs such as Title XIX Medicaid services. The federal SSI program pays monthly checks to persons who are older, blind or have disabilities and who have limited income and assets.

Bureau of Indian Affairs; Educational Services

This federal agency provides education programs for Native American students in various locations within South Dakota. These programs may be of assistance to a Native American adult with a developmental disability between the ages of 18 and 21 years.

Indian Health Services

This federal agency provides comprehensive health care services including: hospital and ambulatory medical care; preventive and rehabilitative services; chemical dependency services; counseling and mental health services; and diagnostic/evaluation and assessment services for Native Americans within the State of South Dakota and should be utilized where appropriate.



Specialized Services

Specialized services for persons with developmental disabilities are available through a number of sources and are often provided in coordination with various generic services. The following are key specialized service agencies/organizations that assist persons with developmental disabilities.

South Dakota Department of Education, Office of Education Services & Supports, Special Education Program

Although this handbook deals only with adults 18 years of age and older, it is important to understand the involvement of Special Education in the lives of persons with developmental disabilities between the ages of 18 and 21 years. The overall mission and goal of the Special Education Program is to assure all children from birth through age 21 years, who are residents of South Dakota and who are determined to be in need of special education and/or related services, shall receive a free appropriate public education. Another goal is to ensure that all children under the care and custody of the state receive appropriate educational services. This agency does not provide direct services but rather provides funding to public, non-public, and state operated schools that provide special education or related services. When exploring possible services available for individuals between the ages of 18 and 21 years, one should first contact the local school district and, for further assistance, the state Special Education Program office.

South Dakota Department of Human Services

Division of Developmental Disabilities (DDD) - This agency is mandated, by both federal and state law, to perform many functions for the purpose of assisting people with developmental disabilities to access services and supports they need and to assure that services and supports are available to all who need them. The agency's functions fall under the areas of administration coordination, planning, influencing, advocating, monitoring, evaluating, and follow-along. The agency has the responsibility for establishing standards for and certifying the nineteen (19) non-profit community-based service providers also known as adjustment training centers (ATCs). Other programs of this Division include adult foster care, Family Support 360, and respite care.

Guardianship Program - This program provides guardianship and conservator services for people who meet the following minimum criteria for application. The person must be 18 years of age or older; have a documented developmental disability as defined in 27B-1-18; receive services or financial assistance from DHS as defined in 29A-5-110; and have no other individual or entity qualified and willing to serve as guardian.

South Dakota Developmental Center (SDDC) in Redfield - This state facility is certified as an Intermediate Care Facility for persons who have mental retardation or other related developmental disabilities (ICF/MR). SDDC provides individualized 24-hour treatment, supports and services for individuals who meet the eligibility criteria.

Services at the SDDC are divided into three program areas:

- Program One serves males with challenging behaviors who have a wide range of abilities.
- Program Two (also known as Turtle Creek Youth Program) serves male and female adolescents (through age 21 years, when necessary) who have unsuccessfully received treatment in a less restrictive environment and who display behaviors that are dangerous or cause concern for the safety of the individual or others.
- Program Three serves males and females with a variety of behavioral issues and persons who require a great deal of assistance in their activities of daily living.

Community Based Service Providers (Adjustment Training Centers of ATCs)

These 19 private non-profit agencies may go by various names; however, they all meet the standards and requirements for “adjustment training centers.” The ATCs receive funding from state agencies including: the Department of Human Services, Division of Developmental Disabilities and Rehabilitation Services; the Department of Social Services, Title XIX programs; and from the Department of Education, Office of Education Services & Supports, Special Education Program; or local school districts. The ATCs provide both day and residential services and primarily serve individuals sixteen (16) years old and above. Eligibility for services from an ATC is through one of the state agencies purchasing services, through the local school district, through other government programs, or through the ability to privately pay for the services. Referral for services from ATCs should be made through the Department of Human Services, Division of Developmental Disabilities.

South Dakota Advocacy Services

This agency is an independent, private, nonprofit, tax-exempt corporation designated by the Governor to assist in providing protection and advocacy services to eligible South Dakotans. A component of this agency is the Protection and Advocacy Developmental Disabilities Program (PADD). PADD provides services to eligible persons under authority of the federal Developmental Disabilities Assistance and Bill of Rights Act. For persons with developmental disabilities coming into contact with the criminal justice system, this program may become very important. Services that PADD provides include: a) information on rights and referral to appropriate agencies; b) authority to respond to and investigate allegations of abuse and neglect; c) legal representation; d) training and presentations on rights, empowerment, and services. This protection and advocacy system is mandated by

Federal statute; providing that each state has a program in place for protecting the rights of persons with developmental disabilities.

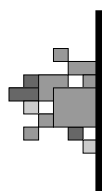
Center for Disabilities, Sanford School of Medicine of The University of South Dakota
The Center for Disabilities is funded primarily through the federal Developmental Disabilities Act and the federal Maternal and Child Health Program. The Center is South Dakota's University Center for Excellence in Developmental Disabilities Education, Research and Service. This agency's major focus areas are: academic training, community education/technical assistance, information dissemination, research/evaluation, and services/supports.

Other Agencies and Organizations

There are numerous other private, not-for-profit agencies and organizations within South Dakota that, in certain situations, may be of significant help to participants in both the human services and criminal justice system as they work with a person with a developmental disability. Some of these organizations are listed in the "Resources" chapter although not listed separately in this section of the handbook.

Summary

This overview of the human services system (as is the case with the criminal justice system) does not begin to fully describe the complexity and variety of the agencies and organizations involved. Our attempt in this section was to provide only enough information to assist primarily criminal justice system personnel to better understand the available resources within the human services system that might make their job easier in working with a person with a developmental disability. We encourage individuals within the criminal justice system to make an effort to meet and visit with the primary human services system agencies and organizations within your local community prior to when you are faced with the unique problems and issues surrounding a person with a developmental disability.



The Criminal Justice System

Some type of criminal justice system exists in all towns, cities, and states in the United States. **This handbook focuses on the state criminal justice system but remember there are federal and tribal criminal justice systems as well.** All of these various systems operate somewhat alike; however, none of them operate precisely alike.

For the purposes of this handbook, the criminal justice system is divided into four separate components - **law enforcement, attorneys, courts and corrections.** Each of these four

components has distinctly separate tasks; however, each works very closely with the others. The criminal justice system is not one of separated unrelated actions and activities; but rather a continuum of orderly structured events.

- Law enforcement personnel enforce laws and ordinances; arresting citizens who do not obey them.
- Attorneys are advocates who prepare cases on behalf of the parties whom they represent (either prosecuting or defending the person accused of wrongdoing) and present those cases to the court.
- Courts are where trials occur.
- Corrections provide supervision and treatment services to offenders adjudicated by the courts.

The system is designed to enforce the standards of conduct necessary to protect both individuals and the community. The system operates through the process of determining criminality, apprehending, prosecuting, convicting, sentencing, and treatment of the members of the community who violate the rules and laws of that community. Obviously, the criminal justice system is much more complicated than the above suggests. For the purposes of this coordination handbook, we will briefly discuss each of the four components as they operate within South Dakota.

Law Enforcement

Municipal (City/Town) Law Enforcement Offices

Local law enforcement offices have the responsibility of enforcing state laws and city ordinances within those municipalities. These law enforcement offices may range from relatively large and specialized operations in a city the size of Sioux Falls to one or two officers in small communities. In a large city, the law enforcement offices may be specialized to the degree of designating special uniformed officers for traffic and patrol duties, other officers as detectives for investigation of specific crimes, etc. Small communities have their limited number of officers involved in all aspects of law enforcement. The typical law enforcement officer will investigate complaints, criminal activity and motor vehicle accidents. The municipal law enforcement office is frequently called upon for assistance in a variety of circumstances especially when there seems to be no one else to who to turn. In some very small communities, there may not be a municipal law enforcement office. In those cases, law enforcement is usually the responsibility of the County Sheriff.

County Sheriff

Generally, the sheriff's functions include criminal investigation, patrol and traffic law enforcement in a county's unincorporated areas that are not protected by the municipal law enforcement offices. It is important to note, however, that in many situations the municipal law enforcement offices and the sheriff's department may cooperate and

coordinate their resources. The sheriff's department, in many of the larger populated counties, will have the responsibility for the county jail facility, including booking, monitoring, and developing programs for inmates within the jail. The sheriff's department is also generally responsible for serving subpoenas and other legal documents for the court system.

South Dakota Highway Patrol

The South Dakota Highway Patrol has a wide variety of specific duties including: enforcement of traffic laws; investigation of accidents; detection, apprehension, and prosecution of alcohol impaired drivers; criminal interdiction; promotion of highway safety; rendering medical aid to sick and injured; testifying in court; protection of dignitaries and officials; restoring order during public disturbances; helping the motoring public; and assisting other law enforcement agencies.

South Dakota Attorney General's Office

This office has three areas of responsibility; 1) fight crime by assisting city and county law enforcement; 2) represent all of the officials and agencies of state government in administrative hearings and litigation; and 3) enforce consumer protection laws for the benefit of all South Dakota citizens. The office includes the Division of Criminal Investigation, Appellate Division, Consumer Protection, Natural Resources Division and the Medicaid Fraud Control Unit.

Division of Criminal Investigation (DCI) - This office includes the central repository for criminal history records in South Dakota. DCI operates a Criminal intelligence Unit that assists local, state and federal governments by operating the state forensic laboratory to collect, analyze and disseminate criminal intelligence information to support criminal investigations. DCI also serves as the manager and database center for the South Dakota Law Enforcement Information Network (LEIN) acting as a liaison for a variety of federal services available to law enforcement such as Interpol and the Financial Crimes Enforcement Network. DCI Special Agents investigate major felonies in conjunction with local, state, tribal and federal agencies. High Intensity Drug Trafficking Area (HIDTA) Agents work on both intelligence and statistical analysis of information related to methamphetamine and other drug trafficking. This office also administers statewide drug task force activities and criminal justice training resources.

Alcohol, Tobacco, Firearms, and Explosives

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is a law enforcement organization within the United States Department of Justice with unique responsibilities dedicated to reducing violent crime and protecting the public. ATF enforces the federal laws and regulations relating to alcohol, tobacco, firearms, explosives and arson;

suppresses and prevents crime and violence through enforcement, regulation and community outreach; ensures fair and proper revenue collection; and supports and assists federal, state, local and international law enforcement.

Federal Bureau of Investigation (FBI)

This agency is responsible for investigating the bulk of crimes committed in violation of federal criminal law and to protect and defend the United States against terrorist and foreign intelligence threats. The FBI has jurisdiction over violations of more than 200 categories of federal law. Programs include; Intelligence, Strategic information and Operations Center; Office for Victim Assistance; and Community Outreach. FBI Field Offices are located throughout the United States and in San Juan, Puerto Rico. The Minnesota Division has federal investigative responsibilities within the State of South Dakota.

Office for Victim Assistance/Victim Assistance Program - This office ensures that victims of crimes investigated by the FBI are afforded the opportunity to receive the services and notification as required by federal law. There are Victim Specialists assigned to offices in Aberdeen, Sioux Falls, Pierre and Rapid City, South Dakota primarily dealing with crimes in Indian Country.

Community Outreach Programs - Experienced FBI employees serve as specialists in each Field Office for the Community Outreach Programs. Duties include establishing a network of resources, creating prevention programs, giving speeches, conducting events, etc., and coordinating the development and growth of community programs to improve the quality of life in the communities served by the FBI's field offices.

United States Marshals Office

The United States Marshals Service is involved in virtually every federal law enforcement initiative. This office is charged with functions such as providing security for the federal courts, fugitive investigations, witness security, prisoner services, transporting federal prisoners, asset forfeiture, serving legal papers (summonses and subpoenas) and special operations and programs. The United States Marshals Office for the District of South Dakota is located in Sioux Falls.

Tribal Law Enforcement

In South Dakota, it is important to note that there are nine reservations, each having its own tribal law enforcement agencies. The basic functions and duties of the tribal law enforcement offices do not differ significantly from the description of the municipal law enforcement offices given previously. Each of the tribal law enforcement offices relates to their individual reservation tribal court.

One must remember that the Bureau of Indian Affairs and the Federal Bureau of Investigation also has jurisdiction in certain types of cases.

Attorneys

Generally, attorneys will enter the criminal justice picture after law enforcement and before the courts become involved. Attorneys are advocates who either represent the various political entities or the particular clients who have been accused of a criminal offense. For purposes of this brief overview, we will discuss attorneys in the context of “prosecuting attorneys” and “defense attorneys.”

In South Dakota, the primary prosecuting attorneys are the state’s attorney in each county and the State Attorney General. The defense attorney could be from a public defenders office or a private attorney appointed by the court or hired to represent the individual accused of a crime.

State’s Attorney

A state’s attorney is elected as the chief law enforcement officer for a county. Responsibilities of this office include: supervising the investigation and prosecution of the adult felony and misdemeanor offender; prosecuting juvenile delinquent children in need of supervision and abuse and neglect petitions; handling all involuntary civil commitment proceedings concerning persons with mental illness and developmental disabilities; and advising and representing the Board of County Commissioners for the county along with all elected and appointed county department heads and their departments.

South Dakota Attorney General’s Office

As mentioned earlier, this office has three areas of responsibility: 1) fight crime by assisting city and county law enforcement; 2) represent all of the officials and agencies of state government in administration hearings and litigation; and 3) enforce consumer protection laws for the benefit of all South Dakota citizens. The attorneys prosecute and defend all actions in which the state has an interest, civil or criminal, in the Supreme Court, including all criminal appeals. This office consults with and advises state’s attorneys, and in some circumstances, provides assistance in prosecuting criminal cases. The Drug Prosecution Unit has statewide jurisdiction in prosecuting drug cases in the circuit courts and exercises concurrent jurisdiction with local state’s attorneys.

Public Defender/Defense Attorney

The Constitution of the United States provides that every person charged with a criminal offense for which they could go to jail if found guilty is entitled to representation by legal counsel. For individuals unable to afford to hire legal counsel, attorney representation is provided through two means: a) in certain larger counties, an office of Public Defender is

established to provide this representation; and b) in the majority of communities and counties where there is no public defender, the court appoints an attorney to represent the person charged. Both the public defender and the court appointed attorney will represent indigent defendants against criminal charges, involuntary mental health commitments, involuntary alcohol commitments, involuntary developmental disabilities commitments, and any other legal proceedings involving a person's constitutional rights. An individual can also hire a private attorney to represent them.

United States Attorney General

The United State Attorney General is the head of the United States Department of Justice and chief law enforcement officer of the Federal Government. The United States Department of Justice enforces the laws and defends the interests of the United States, ensures public safety against threats foreign and domestic, provides Federal leadership in preventing and controlling crime, seeks just punishment for those guilty of unlawful behavior, administers and enforces the Nation's immigration laws and ensures fair and impartial administration of justice for all Americans.

United States Attorneys

United States Attorneys serve as the principal litigators under the direction of the Attorney General. United States Attorneys have three statutory responsibilities: 1) prosecution of criminal cases brought by the Federal government; 2) prosecution and defense of civil cases in which the United States is a party; and 3) the collection of debts owed the Federal government which are administratively uncollectible. United States Attorneys are located in Sioux Falls, Pierre, Rapid City and Aberdeen, South Dakota.

Tribal Attorneys

The basic functions and duties of the tribal attorneys do not differ significantly from the descriptions given previously for state and federal attorneys.

Tribal Court Lawyers - These attorneys are responsible for prosecuting misdemeanors, working with victims of crime and taking complaints before the judge.

Tribal Public Defenders - These attorneys receive referrals from the court clerk when an individual is charged with a criminal offense and requests a lawyer. In tribal courts, the public defender serves as legal counsel for most criminal cases. A defender is responsible for all of the steps required to represent their client in court, including questioning eye witnesses, filing motions, bargaining with the prosecution, formulating trial strategy, and completing legal research.



It is the judicial branch of our government that has the responsibility for conducting fair and impartial trials that determine the innocence or guilt of accused persons. The South Dakota Constitution provides for a centralized court structure known as the **Unified Judicial System**. This system is comprised of a Supreme Court, circuit courts of general jurisdiction, and lower courts of limited original jurisdiction. In South Dakota, the court system is divided into seven circuits. There is one court of general jurisdiction with a magistrate court to handle certain lesser responsibilities. The number of circuits, their boundaries, and the number of judges in each circuit is established by rule of the Supreme Court.

South Dakota Supreme Court

The highest state court is the South Dakota Supreme Court composed of five Supreme Court Judges, with one designated as the Chief Justice. The Chief justice serves as the administrative head of the Unified Judicial System. As the state's highest court and court of last resort, the Supreme Court's primary function is that of an appeals court. Parties seeking to change an adverse circuit court decision appeal to the Supreme Court. The court then examines the circuit court proceedings and determines whether the circuit court's decision was correct.

Circuit Courts

There are currently 38 circuit judges serving within the 7 judicial circuits. Judges are elected in a non-political election for eight-year terms by voters in the circuit each represents. There is one judge within each circuit appointed by the Chief Justice of the Supreme Court to act as the Presiding Circuit Judge. The circuit courts have original jurisdiction in all civil and criminal cases. They are the only court where a criminal felony case can be tried and determined as well as a civil case involving more than \$10,000 in damages. Circuit courts also have jurisdiction over appeals from magistrate court decisions.

In criminal cases, the judge is to be an impartial arbiter, to establish bond, and to decide motions prior to trial. In cases tried without a jury, the judge decides the case. In cases tried before a jury, the judge rules on evidence that may be considered by jurors in reaching their verdict. The judge instructs the jury on points of law pertaining to the crime. The judge determines the appropriate sentence if a conviction or plea of guilty is the result of the criminal proceedings. The circuit courts also perform duties involving juvenile and probate functions, as well as hearing contested small claim actions, contested misdemeanor cases and preliminary hearings in criminal cases.

Magistrate Court

The third tier of courts consists of magistrate courts presided over by lay magistrates or magistrate judges. Magistrate judges must be licensed attorneys while lay magistrates must be high school graduates. In most counties, the Clerk of Courts serve as a lay magistrate.

Generally, magistrate courts assist the circuit courts in processing minor criminal cases and less serious civil actions. Whether presided over by a lay magistrate or a magistrate judge, magistrate courts, as well as the circuit courts, perform marriages, receive depositions, issue warrants, conduct certain preliminary hearings, set bail, appoint counsel, accept pleas for class 2 misdemeanors, and hear non-contested civil and small claims actions where the amount of money or damage does not exceed \$8,000.

Magistrate courts presided over by magistrate judges share additional authority with the circuit courts. These courts may conduct preliminary hearings in all criminal cases, act as committing magistrate for all purposes, and conduct misdemeanor trials. Magistrate judges may also decide temporary protection orders, try civil cases where claims do not exceed \$10,000, and try small claims cases not exceeding \$8,000.

Court Services

Each circuit has a staff of court services officers trained to provide a wide variety of assistance to judges, offenders and the community at large. Court services officers conduct pre-dispositional reports, pre-sentence investigations and recommend to the sentencing judge plans for dealing with juvenile and adult offenders who may be placed on probation. The officers also provide in-state probation supervision; interstate compact supervision; counseling and/or community referral services to those placed on probation. Working with various government and private providers, court services is able to offer intensive probation and community based services as an alternative to committing individuals to the Department of Corrections.

Federal Courts

The United States District Courts are the federal trial courts where federal cases are tried, witnesses testify, and juries serve. Each of the 94 districts is placed in one of 12 regional circuits. Each circuit has a court of appeals. If you lose a case in a district court, you can ask the court of appeals to review the case to see if the district judge applied the law correctly. There is also a United States Court of Appeals for the Federal Circuit, whose jurisdiction is defined by subject matter rather than by geography. The Supreme Court of the United States is the highest court in the nation. You can ask the Supreme Court to hear your appeal, if you lose a case in the court of appeals (or sometimes in a state supreme court). However, unlike a court of appeals, the Supreme Court doesn't have to hear the case.

Tribal Courts

Each reservation has a tribal court that hears violations of tribal ordinances and civil suits involving both tribal and non-tribal members. Tribal courts do not have criminal jurisdiction over people who are not Native American and who commit crimes on the reservation even if they are committed against members of the tribe.

Corrections

Department of Corrections (DOC)

This agency's mission is to protect the people of South Dakota by providing safe and secure facilities for juvenile and adult offenders committed to DOC custody by the courts, to provide opportunities for their rehabilitation, and to provide effective community supervision upon their release.

County or City Jails

These facilities are typically used for individuals who are awaiting trial and who have either been denied bail or have not provided the bail established by the court. Individuals may also be sentenced to a jail term, primarily for misdemeanor offenses. These sentences are "post" trial.

State Prisons

These institutions are for the incarceration of persons who have been convicted of serious crimes (felonies) that generally carry sentences of a year or more. The adult corrections system consists of the Jameson Annex and State Penitentiary in Sioux Falls, South Dakota, the Mike Durfee State Prison in Springfield, South Dakota, the Women's Prison in Pierre, South Dakota and four minimum custody units.

State Board of Pardons and Paroles

The Board of Pardons and Paroles is a nine member appointed board charged with authority to make decisions of parole, revocation of parole, and parole policy and procedure. Each inmate is given an Individual Program Directive (IPD) that is developed consistent with the inmate's time to serve, classification, programming and treatment needs. The IPD establishes standards and criteria for the inmate's initial parole. If the inmate behaves while incarcerated and successfully completes the work, education and treatment programs, agrees to conditions of supervision and has an approved parole release plan, then they will be released at the initial parole date. Any inmate the warden reports has not substantively complied with the IPD has a hearing with the board to determine the inmate's compliance with the IPD. The board may determine the inmate has substantively complied and release them at the initial parole date or as soon as reasonably possible following the initial parole date and hearing. The board may determine the inmate has not substantively met the requirements of the IPD, deny release

at the initial parole date and set the time for a subsequent discretionary parole hearing in 1-24 months. The time of the initial parole date is set by state law (24-15A-30) based on offense seriousness and the number of felony convictions.

Federal Bureau of Prisons

This office protects society by confining offenders in the controlled environments of prisons and community based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens.

United States Parole Commission

The United States Parole Commission promotes public safety and strives for justice and fairness in the exercise of its authority to release and supervise offenders under its jurisdiction. Parole has a three-fold purpose: 1) through the assistance of the United States Probation Officers, a parolee may obtain help with problems concerning employment, residence, finances, or other personal problems which often trouble a person trying to adjust to life upon release from prison; 2) parole protects society because it helps former prisoners get established in the community and thus prevents many situations in which they might commit a new offense; and 3) parole prevents needless imprisonment of those who are not likely to commit further crime and who meet the criteria for parole. While in the community, supervision is oriented toward reintegrating the offender as a productive member of society.

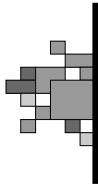
Tribal Corrections

Tribal corrections includes criminal justice professionals from associations, prisons, sheriffs, police and correctional officers. A Corrections Officer oversees individuals who have been detained, are awaiting trials, or who have been convicted and sentenced to jail. Officers primarily enforce regulations through communications skills and moral authority, attempting to avoid conflict at all costs. Corrections officers provide security through enforcing rules, preventing fires, ensuring security measures are in place and accompanying visitors within the jail. Officers are also responsible for escorting inmates to and from cells and arranging daily schedules. Tribal Detention Officers are required to complete and file jail documents, book arrestees into jail, ensure that court documents match the charged, complete the bail bond process, and account for all of the property and people who are in jail during each shift.

Tribal Probation

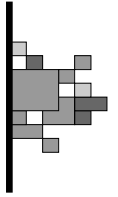
Probation officers supervise people who have been placed on probation, while parole officers supervise offenders who have been released from prison. Officers are to ensure that the offender complies with the conditions of their parole or probation and works with

family members to maintain contact. Officers may require offenders to get job training, counseling or attend rehabilitation meetings. They also attend court hearings to update the court on the offender's compliance with the terms of his or her sentence and on the offender's efforts at rehabilitation and testify on their findings and recommendations. Probation officers also spend much of their time working for the courts. They investigate the background of offenders brought before the court, write pre-sentence reports and make sentencing recommendations for each offender.



Conclusion

The agencies and organizations discussed in the above overviews of the human services and criminal justice systems make up the primary participants that may be involved in any given stage of the criminal justice system when a person with a developmental disability is involved.



Chapter 2

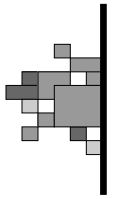
Principal Stages in the Criminal Justice System

The purpose of this chapter is to explore each of the principal stages of the criminal justice system (**investigation, arrest and charge, custody, pre-trial, trial, and disposition after trial**) to determine the participants from both systems and their possible roles when a person with a developmental disability is involved.

It is important for professionals within the criminal justice system to understand the philosophy of the human services system. Services and supports for people with disabilities stress the maximum integration and inclusion of persons with disabilities into the mainstream of life. These services and supports are increasingly focused on assisting persons with developmental disabilities to live, learn, work, and socialize within the community. Persons with a developmental disability should **not** always be treated the same way as everyone else. We must assure people with developmental disabilities are treated fairly and their rights protected while being held accountable for their actions.

Some general information may also be helpful in understanding people with developmental disabilities who become involved with the criminal justice system. First, a person with a developmental disability may not understand or know the consequences of their actions. In many cases, people have been in trouble before and received little or no punishment for their actions. They may be totally surprised to discover the serious nature of the activity/crime and the possible jail or prison sentence that could result. Secondly, for many people with developmental disabilities, all they have ever experienced has been low expectations of them. This may create a situation where the person will view the breaking of a law and getting arrested as being a successful accomplishment. And finally, many people will experience very little success in their social life and in gaining the acceptance and friendship from others. They will often be easily led and manipulated by others (particularly those who are a little “smarter” or “street wise”) to become involved in criminal activity without being aware of the consequences.

An Important Reminder: Persons with developmental disabilities must not be mistaken for persons with mental illness. Persons with developmental disabilities may also have mental illness but this would be an exception rather than a rule. Therefore, at any stage, members of the criminal justice system should seek professionals within the developmental disabilities system in the community, area or state to serve as resources to assist in the early identification and evaluation of the alleged offender. If professionals from the mental health system are utilized, they should have knowledge and experience in working with persons with developmental disabilities.



First Stage - Investigation

It is at this stage, when a person with a developmental disability is being investigated and questioned by law enforcement officers, that there is the greatest need for a determination of some of the problems/issues needing to be addressed by both the human services and the criminal justice systems. At this stage, a person with a developmental disability should have someone who is familiar with them and their disability to advise them, as well as the investigating officers.

Primary participants include law enforcement and an advocate for the person being questioned.

The **law enforcement officer** becomes the first opportunity to assure that the person with a developmental disability is treated fairly and appropriately and is assured their full constitutional rights within the criminal justice system. **However, determining if the person has a disability is not among the first priorities for the officer.** Law enforcement officers in the field make their decisions on the facts and evidence available, the variables regarding the suspect and the victim(s), the danger to the public, and the immediate options available to deal with the suspect. It will likely be difficult for the law enforcement officer to determine if the person has a developmental disability even though the officer may realize “things are just not right.”

There is a good chance the person with a developmental disability will make statements to the law enforcement officer that may be misleading, untrue or very damaging without the opportunity to talk with an attorney.

A law enforcement officer may find the Checklist on the following page helpful in making an initial assessment. Several of the questions are included with permission from Persons with Developmental Disabilities . . . A Guide for the Criminal Justice Practitioner, Pima Council on Developmental Disabilities, Tucson, Arizona.

If the person is receiving services from an **adjustment training center (ATC)**, then their principal staff person (service coordinator) or another staff who knows the person may be very helpful. The specific areas of involvement by ATC staff could include assistance during questioning sessions, as appropriate, and to help assess the person’s understanding of the situation and process.

Checklist for Law Enforcement Officers

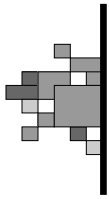
Does the person's

- Emotional responses seem out of proportion to the circumstances?
- Appearance or mannerisms seem younger than their age?
- Attention span seem very short or is the person easily distracted, having difficulty staying focused on a single topic/activity for any period of time?
- Movements appear to be uncontrollable, even after enough time has passed to calm down?
- Speech sound garbled or slurred even though there is no evidence of substance abuse?

Does the person

- Refer to a case manager or service coordinator or friend at a center/home?
- Have an ID that may provide helpful information?
- Eagerly confirm another person's story or copy your or another's mannerisms?
- Appear to be open to being led by others, to agree to things that may not be completely true?
- Seem to forget the question, try several different answers, or having trouble answering basic questions coherently?
- Appear to have limited intelligence and lack of ability to recall and recount basic personal information and other basic facts?
- Appear overly in awe of or intimidated by your uniform, badge, gun, etc.?

ANSWERING YES TO ONE OR SOME OF THESE QUESTIONS SHOULD BE CLUES THAT THE PERSON MAY HAVE A DEVELOPMENTAL DISABILITY AND ASSISTANCE FROM SOMEONE FROM THE DEVELOPMENTAL DISABILITY FIELD SHOULD BE REQUESTED.



Second Stage - Arrest and Charge

It is at this stage, when a person with a developmental disability is formally arrested and charged with a specific crime(s). There is a continuing need for a determination of some of the special problems and issues needing to be addressed by both the human services and the criminal justice systems.

Persons with developmental disabilities do not commit crimes or become involved with the criminal justice system because they have a disability. They become involved with the criminal justice system for the same reasons as other citizens. However, their disabilities may make their involvement much more complicated and traumatic.

The **primary participants** include law enforcement and the state's attorney. Others who may be involved include the public defender/defense attorney, court services officers, Department of Human Services (DHS), DHS/Division of Developmental Disabilities, adjustment training center staff, Department of Education/Special Education Program, and South Dakota Advocacy Services.

The **law enforcement officers** having probably cause to believe that an offense has been committed, has the authority to either issue a citation requiring a later court appearance for a less serious offense or to take the alleged offender into custody for a more serious charge. This first decision as to whether to make an arrest, and the offense for which the arrest will occur, is typically made by the law enforcement officer in the field.

For many people with developmental disabilities, notification of their Miranda Rights by the law enforcement officer will have little meaning and possibly will be totally misunderstood. In these situations, there is a good chance the person will make statements to law enforcement that are misleading, untrue or very damaging without the opportunity to talk with an attorney.

The **state's attorney** has the responsibility to make the charging decision after reviewing the law enforcement officer's report, ordinarily within 24 hours. In deciding whether the alleged offender will be formally charged, and if so, with what offense, the state's attorney is often dependent upon information provided by the arresting officer or by other interested and involved individuals from the human services system. Lack of appropriate or accurate information regarding the alleged offender may mean the state's attorney will have difficulty making the most informed choice regarding possible deferment of prosecution.

People with a developmental disability may be incapable of forming the requisite specific intent that their act caused a certain result. In those cases, the **state's attorney** may defer

or decline prosecution in order to seek treatment or training in a appropriate human services agency. The likelihood of a prosecution resulting in a conviction is ordinarily an important part of the charging decision. The charging attorney wants some indication that the accused, due to their disability, etc., is not likely to arouse sympathy in the court or jury, and thus make a guilty verdict less certain.

Most communities do not have full time public defenders but rely on court-appointed attorneys to represent individuals unable to afford to hire an attorney. The **public defender/defense attorney** would typically not be involved at this stage unless the alleged offender has the knowledge and presence of mind to request an attorney to represent them. However, many people with developmental disabilities become very nervous and scared when confronted by law enforcement and do not understand their right to ask for an attorney. Because of this, a person with a developmental disability may try to talk their way out of confrontations or will try to please the law enforcement officer by trying to answer their questions. The person with a developmental disability may also confess (often to crimes not committed) without legal counsel. Thus, it is important that the person have an advisor early on during the questioning and continuing throughout the judicial process to ensure the person receives the benefits of the person's constitutional protections.

The **court services officer** would be involved at this stage only if the person arrested had an alleged probation violation. In that instance, the court services officer would file an "Affidavit to Show Cause" for alleged probation violations and would testify at the probation revocation hearing.

If the person who has been arrested is currently receiving services from a community service provider that contracts with the Department of Human Services (such as an adjustment training center (ATC)), the incident must be reported to the **Department of Human Services/Division of Developmental Disabilities** within 48 hours or the next working day, whichever comes first, once the ATC becomes aware of the incident. This reporting allows for Division staff to assist in whatever way possible, including possible referral to the South Dakota Developmental Center.

In addition, if the **Department of Human Services/Guardianship Program** acts as guardian for the person, their staff becomes formally involved as an advocate for the person with developmental disabilities.

The specific areas of involvement of the **Adjustment Training Center (ATC)** staff could include:

- When informed by law enforcement or others that the person has been arrested, assist, as appropriate, during questioning sessions and to help assess the person's understanding of the situation and process;
- Contact the person's parent(s), guardian, and/or other advocate (where applicable) and the Division of Developmental Disabilities (as required); and

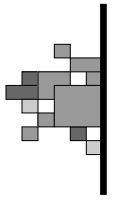
- Assist the person in obtaining an attorney and/or other advocacy assistance.

Many people with developmental disabilities who come into contact with the criminal justice system will not be receiving services and/or supports from Adjustment Training Centers (ATCs). Rather, these people work and live independently within the community. These people often create the biggest concern for law enforcement officials who are sincerely attempting to treat the person with a developmental disability fairly and appropriately. People may not be distinguishable as persons with disabilities. Often, people do not want to be identified as having a disability and will try very hard to disguise their disability. In these circumstance, the **Department of Human Services/Division of Developmental Disabilities** is an appropriate resource.

For adults between the ages of eighteen (18) through twenty-one (21) years, there should be an inquiry regarding the person's education status at the time of arrest. This inquiry should be made to the local school district in the community where the alleged offender lives. If this is not possible, a contact with the **Department of Education/Special Education Program** may be of assistance in obtaining information on the educational status of the person. If the person has not graduated from an approved secondary education program, it should be determined if the individual was enrolled in school at the time of the arrest, and, if so, were they receiving special education services through an Individual Education Plan (IEP). If the person was enrolled in an approved secondary education program and receiving services based on an IEP, then the contact should be made with the person's resident school district to arrange for continuation of special education services.

The Department of Education/Special Education Program is also a resource regarding persons with developmental disabilities who are under the care and custody of the state.

The staff of the **South Dakota Advocacy Services** does not have a prescribed role to play but may have involvement as a resource at any point in the process. This statewide advocacy service may become a participant as a resource to any party involved for information and should be used by people with disabilities, their families, and staff from the human services and/or criminal justice system. Their staff members will inquire whether an attorney has been appointed, about the nature of the charge, and where the person resides to make sure that the accused is represented and that someone will be available locally to monitor the situation. They may offer suggestions relevant to the case.



Third Stage - Custody

Once the decision has been made to arrest a person with a developmental disability, the decision of custody is the next stage in the criminal justice system. This stage can become very critical since jail facilities are not designed specifically to serve persons with developmental disabilities. The person with a developmental disability may not be able to express their needs regarding medication, communication assistance devices, special dietary needs, physical problems, etc. and thus staff in the jail is often not prepared to meet those needs. If the person is receiving services and supports from an adjustment training center (ATC), their staff is an important resource for this information.

If the alleged offender has yet to be identified as having a developmental disability, it becomes critical at this stage to involve professionals with expertise and experience in working with people with developmental disabilities to make that identification. If local mental health services are utilized, it is important that the professionals have experience with evaluation and needs of persons with mental retardation or other developmental disabilities.

The **primary participants** include law enforcement, jailers, state's attorney and the court. Others who may be involved include the public defender/defense attorney, court services officer, Department of Human Services (DHS), DHS Division of Developmental Disabilities, adjustment training center (ATC) staff, Department of Education/Special Education Program, community mental health centers and South Dakota Advocacy Services.

Law enforcement officers will often seek alternatives to incarceration in jail for a person they suspect has a developmental disability. Their willingness to successfully work with the state's attorney to seek alternatives to incarceration may depend upon the seriousness of the alleged offense. Law enforcement officers have a responsibility to ensure security and safety of the arrestee during the time of arrest, transport and handling. The officers may also be responsible for security during any medical and/or psychological evaluations or treatment or during any court appearances.

If the person is held in a jail facility, they may be impacted by a number of different staff, depending upon the size of the jail facility. In the larger communities, the accused person would be booked into the jail by a booking officer. This staff person would record personal information and take medical information. The booking officer would also complete a suicide form and monitor the inmate for up to 12 hours in the booking area. The booking officer could request medical staff to do further evaluation to determine the person's medical needs. The larger jail facilities may have medical staff available to assist in providing and/or arranging for necessary medical services, and program staff to assist in development and implementation of programs for the inmate and to recommend

appropriate housing options. Both the medical and program staff are often in position to contact community resources for assistance with inmates with special needs. **Jail personnel** may find the following checklist helpful in determining assistance for a person with a developmental disability.

Checklist for Use by Jail Personnel

1. Check for an ID. Many persons with developmental disabilities do not have a driver's license. Rather they may carry a picture ID, wear an identification bracelet or have another form of identification.
2. Inquire if the person has family members, friends, a Service Coordinator or other support staff you could call.
3. Contact family, friends or service provider to inform them and request assistance.
4. Determine if they:
 - Take medication. If they do, obtain information about the medication including times medication is to be taken.
 - Have a medical condition such as epilepsy/seizures, diabetes. Find out as much as possible about the condition, i.e. type and frequency of seizures, medications, etc.
 - Have special dietary needs.
 - Use a communication assistive device such as a communication book, electronic device or use sign language to communicate.
 - Have mobility difficulties that require the use of an assistive device such as a walker, can or do they wear braces.
 - Have a hearing or visual impairment.
 - Have other special needs.
5. Determine supervision needs to ensure their health and safety.
6. Determine assistance needed to complete personal care activities (bathing, etc.).
7. Determine if they have behavioral problems or a mental illness diagnosis that requires supervision or intervention.

The **state's attorney** plays a major role in early decisions regarding whether or not to prosecute and whether or not to seek a course of placement for treatment in a state or community human service agency as an alternative to prosecution. This decision will be made in the best interest of the victim and of the state, not necessarily of the alleged offender.

The **public defender/defense attorney** would only be available to the alleged offender if the person knew to ask for an attorney or if someone requested an attorney on the person's behalf. If the attorney is representing the person at this stage, the attorney might work with the law enforcement officers and the state's attorney to seek a release of the person or an appropriate place for custody of the alleged offender during the pre-trial stage. If the state's attorney considers an involuntary commitment of the person, the defense attorney should represent the person during these proceedings.

An arrest for a misdemeanor offense such as disorderly conduct or simple assault not resulting in a serious injury will result in a pre-hearing release of the accused upon posting a bond set pursuant to either a fixed bond schedule or a bond which has been set by a **magistrate judge**. More serious offenders, including those charged with felonies, must appear in court where a bond is fixed after hearing arguments from the state's attorney and the defense attorney.

Bail is to be established as a personal recognizance bond unless the court determines that such a release will not reasonably assure the appearance of the accused at future court proceedings or the defendant may pose a danger to any other person or to the community. The factors weighted by the **court** in setting bond concern primarily the risk of flight posed by the accused should the person be released and the danger to the community which may accompany pre-trial release. Whether the accused is a risk to themselves is not a criteria in determining pre-trial release in the criminal system. If such a danger exists, it may give rise to an involuntary civil commitment proceeding. All persons charged with a crime and awaiting trial who are unable to make bond are held in jail without work release and without special furlough.

The **court** can establish additional conditions for release including placing the defendant in the custody of a designated person or organization, restricting travel, requiring an appearance bond, preventing contact with victims, or other provisions designed to protect the public and assure future appearances. The court could order the person to voluntarily participate in treatment such as at the South Dakota Developmental Center (SDDC). A person in need of drug and alcohol treatment is able to receive that treatment as a part of their overall treatment if participating in a program at SDDC. Referral should be made through the Department of Human Services/Division of Developmental Disabilities.

It is important to note that a person with a developmental disability cannot be adjudicated (sentenced) to SDDC. Admission must be voluntary except in the case of a competency evaluation. A judge could order placement of the person at SDDC for an evaluation of

competency under South Dakota Codified Law (SDCL) 23-A-10-A. Placement for a competency evaluation is an involuntary admission.

Involvement of a **Court Services Officer** at this stage would relate only to a person with an alleged probation violation. In this instance, the Court Services Officer would place the alleged probation violator in custody.

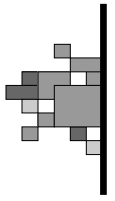
The **Department of Human Services/Division of Developmental Disabilities** is a resource for information on types of services, availability of services, and appropriate funding mechanisms that might be of assistance in locating alternative custody options that may include the South Dakota Developmental Center. **It is important to note that the earlier the Division is involved the easier it becomes to locate appropriate services for the person.**

For people receiving services from an **adjustment training center (ATC)**, the service coordinator is available to assist the person in custody to:

- Obtain bail if the court decides that bail is appropriate;
- Help law enforcement assess the amount of supervision the person needs; and
- Make recommendations as to whether the family, the adjustment training center, or another human services facility might be available and appropriate for custody.

If the alleged offender is to be kept in jail, the service coordinator could assist jail personnel by providing special instructions regarding the person including information on medications, communication needs, assistive devices needed, special dietary needs, and other areas of concern. The staff from the ATC is available to visit and/or call, as appropriate, to determine the daily status of the person. While the alleged offender is in custody, the ATC staff would be able to assist in assuring the person's personal business is being taken care of including payment of rent and other bills, notification of employers, etc. In most cases, the service coordinator would facilitate an interdisciplinary team meeting to determine whether it is appropriate for the person to return to the ATC upon release from jail. Lastly, ATC staff would be an excellent resource for the alleged offender to ensure that the person understands as best as possible the criminal justice proceedings and that the person's rights are being protected.

Other agencies that might be appropriate resources include the Department of Human Services, Department of Education/Special Education Program (if the person is between 18 and 21 years of age and receives special education services), community mental health centers and South Dakota Advocacy Services. These were described in "Second Stage - Arrest and Charge," earlier in this chapter.



Fourth Stage - Pre-Trial Activities

The pre-trial stage primarily involves the attorneys (both prosecuting and defense) and determines the direction of the alleged offender's case. Simply put, the person's case could be handled primarily in four ways:

1. Plea negotiations resulting in court acceptance of the plea and sentencing or the defendant being sent to trial to determine guilt or innocence;
2. The defendant can be judged mentally incompetent to stand trial;
3. The defendant can be placed directly in a state or community treatment or training program (with the agreement of the provider) without prosecution; and
4. The defendant can simply be released.

As one can easily understand, the knowledge (or lack of knowledge) of an alleged offender's disability during this stage becomes very important.

It is very important for persons working in the human services systems to recognize that law enforcement and our system of justice, particularly at this and the trial stages, is now couched in terms of an adversarial process. The thought being that advocates of competing positions can best put the truth to the court or the jury in a context best geared to protect the rights of the accused and victims. The adversarial process is often a very difficult process for persons working in the developmental disability field to understand and adapt to their style of planning and development of programs to meet the needs of persons with disabilities.

Defense attorneys, prosecuting attorneys and judges must face difficult questions when a person with a developmental disability becomes involved with the criminal justice system. **The following questions should be helpful in identifying and accommodating a suspect or a defendant with disabilities.** Must do not have definitive answers. It is, however, important to address them to ensure a person with developmental disabilities is identified and reasonably accommodated within the criminal justice system. "Questions to be Asked by Attorneys, Prosecutors and Judges" appears on the next page of this handbook.

Questions to be Asked by Attorneys, Prosecutors and Judges

The following questions were taken from the article, "Suspects, Defendants, and Offenders with Mental Retardation" published in the Wyoming Law Review, 2001, Volume 1, Number 1, pages 9-10.

1. Does the defendant understand the nature and consequences of the act?
2. Did the defendant understand at the time of the act or only when it was explained later?
3. Can the defendant accurately explain events?
4. Is the defendant's explanation or description tainted by the influence or suggestion of others?
5. Can the defendant understand their rights in the legal system, such as Miranda rights, the right to a trial and the right to testify?
6. Can the defendant assist the attorney in their defense?
7. Is the defendant assisting the attorney?
8. Was the confession voluntary, knowing and reliable?
9. Is the defendant competent to stand trial?
10. Is the defendant competent to plead guilty?
11. Is the defendant competent to make the decision to testify?
12. What consideration should the judge or jury give to the defendant's disability when deciding guilt?
13. Should the disability be considered a complete or partial defense or a mitigating factor reducing the defendant's culpability?
14. What rights does the offender with mental retardation (developmental disabilities) have to appropriate rehabilitation?
15. Are there alternatives to incarceration that are better able to teach the offender responsible behavior or should the offender be incarcerated in the same facilities for the same terms as non-disabled criminals?

The **primary participants** during pre-trial activities include law enforcement, the state's attorney, public defender/defense attorney, the court, and adjustment training center (ATC) staff. Others who may be involved include court services officer, Department of Human Services (DHS), DHS/Division of Developmental Disabilities, Department of Education/Special Education Program, and South Dakota Advocacy Services.

Law enforcement offices should work with the state's attorney and available state and community resources to develop an alternative diversion from court for a person with a developmental disability. Whether this happens greatly depends on the knowledge of the law enforcement office regarding the issues/difficulties facing persons with developmental disabilities and their awareness of the resources available. Tribal law enforcement officers may also work within their system to seek alternative disposition of the case other than an appearance in court. If the case goes to court, the law enforcement involvement at this stage will end (other than follow-up investigation and interview activities) until such time as their testimony might be needed. County Sheriffs may provide guard or security assistance and may also be responsible for transport of the alleged offender to and from court, medical facilities, attorneys, or other appropriate sites.

It is at this stage that the **public defender/defense attorney** becomes involved even if the alleged offender does not understand their right to have an attorney. The defense attorney becomes involved with the case at the time of the arraignment. At this stage, our justice system assures that no person accused of an offense for which they may be sentenced to a jail or prison will stand trial without representation by an attorney. The defense attorney also represents the alleged offender during any proceedings to determine competency.

Typically, for the **state's attorney**, the pre-trial activities for a person identified as having a developmental disability concerns the hearing of motions relating to the mental status of the defendant.

The **judge or magistrate judge** holds a preliminary hearing on felonies and Class 1 misdemeanors to determine if there is probable cause to believe this defendant committed the charged offense. If probable cause is found, the defendant is arraigned, advised of their rights, and enters a plea. In a number of counties the magistrate judge, recognizing the practices of the state's attorney, refers the case (defendant and attorney to the state's attorney for a dispositional conference rather than setting a preliminary hearing (primarily wanting to settle the case through a plea bargain). This procedure is not always acceptable to the defense counsel; however, when the defense counsel refuses to waive the preliminary hearing the state's attorney sends the case to the grand jury (then, the defendant does not have the right to a preliminary hearing) being comfortable that the grand jury will present a "true bill" which leads to the indictment and an automatic criminal trial. Further, in both the magistrate and circuit court most likely there will be pre-trial conferences regarding a number of possible issues, e.g., allowable evidence, suppression of documents, witnesses, etc.

The **court** may also need to determine if the alleged offender is competent to be tried if not determined previously. First, the competency of the accused to understand the nature of the charges filed against them and the person's ability to assist their attorney in defending against the charges (competency to stand trial) is determined. If the defendant doesn't understand the significance of their right to be presumed innocent, the right to be tried by a jury, etc., it is unlikely they will understand many defense strategies. **A defendant who cannot assist their attorney in pursuing a defense cannot, under South Dakota law, be tried.** Second, the criminal culpability of the accused at the time of the commission of the offense (competency to commit offense) has to be considered.

The judge will generally be dependent upon information provided by the prosecuting and defense attorneys to identify disabilities that may play a part in the disposition of the case. The court should ensure the use of professionals who are experienced in working with and evaluating/assessing persons who have developmental disabilities.

In cases where the issue of competency is to be determined, it is usually during this stage that the alleged offender is evaluated and assessed for that purpose. This is the first formal process whereby the alleged offender with a developmental disability might have their disability identified and issues/difficulties determined. This identification of the person's developmental disability may serve to counter many situations that occurred or did not occur during the previous stages because of lack of identification.

The judge can order the person (involuntarily) to the **South Dakota Development Center (SDDC), an adjustment training center (ATC)** or other approved facility for a competency evaluation under South Dakota Codified Law (SDCL) 23A-10A-13. Voluntary admission at the SDDC may also be considered at this stage for persons who meet the admissions criteria (see information on SDDC in Chapter 1). Referral should be made through the Department of Human Services/Division of Developmental Disabilities.

The **Human Services Center** is available to assist only if the alleged offender is considered to have a dual diagnosis (developmental disability and mental illness). During this stage the psychiatrist, psychologist, or other professionals could become involved in competency determination evaluation. A staff psychiatrist would be assigned to the evaluation and, based upon the results of the evaluation, would potentially refer the person to other professionals for further review. Following the completion of the examination, a full written report would be developed by the psychiatrist and presented to the court.

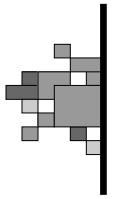
The **Cast*MR (Competence Assessment to Stand Trial)** is designed to assess the competence of persons who have mental retardation or some other developmental disabilities to stand trial. The assessment must be administered by an expert examiner such as a psychiatrist, psychologist, special educator, or social worker. Each question is read aloud and the person's responses recorded in a booklet. The test usually takes from 30 -45 minutes to complete. (See the Definitions Section of this handbook for further information.)

In most situation, the **court services officer** would not be involved at this stage, unless they are requested to prepare a pre-plea bargain, pre-sentence investigation with the report being made available to both the defense and the prosecution. If the person's disabilities have not surfaced prior to this stage, the pre-plea, pre-sentence investigation may be positive and necessary.

As in the previous stages, for people receiving services from a community **adjustment training center (ATC)**, the service coordinator is available to help obtain information necessary from the person's service provider files, from school records, etc. to assist in determining competency status. The ATC staff is also available to:

- Accompany the alleged offender to appointments, including hearings, meetings with attorneys or evaluations/assessments.
- Inform the court and the defense counsel regarding the status of the person's ability to return to the ATC upon release.
- Assist the defense attorney to understand the needs of the person including any issues/difficulties with communication or assuring the person understands the process and their rights.
- Begin the development of a special Individual Support Plan that may incorporate an **Individual Justice Plan (IJP)**. The context of the IJP and the degree of development of the plan, at this stage, would depend on the outcome of the pre-trial activities and if the person returns to the ATC.

Other agencies that might be appropriate resources include the Department of Human Services (DHS), DHS/Division of Developmental Disabilities, DHS/Division of Alcohol & Drug Abuse (for an individual with developmental disabilities who also has a drug or alcohol problem and is in need of financial assistance and placement), community mental health centers, South Dakota Advocacy Service, and Indian Health Services.



Fifth Stage - Trial Activities

The judicial branch of government is responsible for conducting fair and impartial trials to determine the guilt or innocence of alleged offenders, including persons with developmental disabilities. Information regarding the defendant's disabilities, issues/difficulties should have been identified and made available to the court prior to this stage. Lack of important information at this stage will make it much more difficult for an alleged offender with a disability to receive fair and appropriate treatment in the court.

The **primary participants** include the court, the state's attorney, public defender/defense attorney, and adjustment training center (ATC) staff. Others who may be involved include law enforcement officers, Department of Human Services (DHS), DHS/Division of Developmental Disabilities, South Dakota Development Center (SDDC), community mental health centers and South Dakota Advocacy Services.

The **judge** presides over the trial, rules on objections, and reads to the jury (in jury trials) the instructions of law that apply to the case, after all of the evidence has been presented. During the trial, the judge maintains order and ensures that both the State and the defendant receive a fair trial and a fair opportunity to present evidence.

The **state's attorney** prosecutes the case against the defendant. While the person with a developmental disability may claim any of the traditional defenses, i.e., alibi, mistaken identity, etc., issues of competence are more frequently at issue when the accused is, or may be, someone with a developmental disability. Such cases often involve a fact finding hearing, and the testimony of witnesses who may have a particular expertise in issues concerning developmental disabilities and who will be permitted to express an expert opinion for the jury.

The **public defender/defense attorney** will serve as the defendant's attorney. It is important to note that the defense attorney will advocate for what is best for the person within the context of the legal system, not necessarily what is best for them in the context of the human services system. Information on identification, assessment, and evaluation of the person's disability, needs, limitations and competency should have occurred in previous stages.

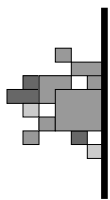
During the trial activity, **law enforcement officers** may provide or arrange security and transportation to court. They may also provide actual testimony while in court and make all necessary reports and evidence available.

For people receiving services from a community **adjustment training center (ATC)**, the service coordinator or other staff from the ATC is available to:

- Assist the defendant to attend appointments and hearings and help insure that they understand the process and what is being said.
- Assist the person and their family in providing clothing for court appearances.
- Provide support to the family.
- Provide case documentation and/or testimony as requested by court order or subpoena.
- Attend the trial to assist and support the defendant.

Professionals from a **community mental health center** with experience and expertise and working with persons with developmental disabilities could serve as a resource to testify as to the competency to stand trial and to provide expert testimony related to the defendant's alleged criminal activity and the prognosis for rehabilitation should be defendant be found guilty.

Other agencies that might be appropriate resources include the Department of Human Services (DHS), DHS/Division of Developmental Disabilities, South Dakota Developmental Center (possible voluntary admission), and South Dakota Advocacy Services.



Sixth Stage - Disposition After Trial

An “alleged offender” becomes an “offender” at the time the person pleads guilty or is found guilty by a court of law. If the individual is found not guilty, this stage of the criminal justice system is not relevant and the person may return to their life prior to the incident. If the person is found guilty, disposition becomes the next stage of the criminal justice process. Disposition may involve probation, financial or community service sanctions, incarceration in either a county jail or state prison, or alternative placement for specialized treatment. The use of the **Individual Justice Plan Process** (see Chapter 3) at this stage becomes very significant for a person found guilty.

The **primary participants** during this stage include the court, the state's attorney, public defender/defense attorney, court services officers, adjustment training center (ATC) staff and the Department of Corrections. Others who may be involved include Department of Human Services (DHS), DHS/Division of Developmental Disabilities, South Dakota Developmental Center and South Dakota Advocacy Services.

If the accused is found guilty after trial, or pleads guilty prior to trial, the judge must then determine the sentence to be imposed. In imposing sentence, the court looks at the offense that was committed, the person who committed the offense, any damages sustained by the victim, possible rehabilitation of the defendant, the safety of the general public, and numerous other factors. To assist in determination of sentence, the circuit court judge utilizes information regarding the person's disabilities offered during the trial

as well as information provided by the court services officers in the pre-sentence investigation. See previous reference regarding utilization of the services at the South Dakota Development Center (SDDC) before sentencing occurs.

Typically, the role of the **state's attorney** after trial is limited to making a recommendation to the sentencing judge that serves both the interest of society in its protection from future criminal offenses and the offender by attempting to prevent future crimes. Assistance and insight to the court, from those who work with, live with, and know the offender, should not be underestimated.

The **public defender** assists the defendant in understanding the sentencing options and works with the court, as appropriate, to secure the most beneficial sentence or placement for treatment.

It is at this stage that the **court services officer (CSO)** provides, upon order of the court, a pre-sentence investigation (PSI). A PSI is discretionary on the part of the judge and occurs in approximately 50% of the cases in South Dakota. If the offender is receiving or has received services from an adjustment training center (ATC), information to aid in development of the PSI should be requested from the agency. If the person has not been involved in the disability service system, the CSO may be able to obtain information from the person's local school district, Department of Human Services (DHS)/Division of Developmental Disabilities, Department of Education/Special Education Program, or DHS/Division of Rehabilitation Services. The role of the CSO, if the person is placed on probation or into a state or community service agency, is important. The CSO must be involved in the **individual justice planning process (IJP)**. Correctly carried out, the IJP can become a process and resource that greatly assists the CSO in their supervision of the offender.

The service coordinator from the **community adjustment training center (ATC)** at which the person received services prior to involvement with the criminal justice system could assist as follows:

- If the person were found guilty, the staff would offer assistance to the court services officer in the pre-sentencing investigation, as appropriate.
- If the person is able to continue to receive services from the ATC, the service coordinator is available to provide assistance in coordination, development and implementation on an **Individual Justice Plan** upon approval by the court.
- If the person is incarcerated or placed at the South Dakota Development Center or another agency for treatment, the service coordinator is available to help arrange the transition, assist the person in completing their personal business before leaving, and inform team members regarding discontinuation of services.
- If the person is acquitted, the service coordinator will convene the person's team and revise the person's Individual Support Plan so supports and services meet their needs.
- Notify the DHS/Division of Developmental Disabilities of the outcome of the trial.

The **Department of Human Services/Division of Developmental Disabilities** can provide assistance to family members and legal representatives in obtaining placement, treatment and services for the offender. **REMINDERS:** The earlier the Division is involved in the process, the easier it becomes to locate appropriate services for the person. Decisions regarding placement at the **South Dakota Developmental Center** for persons who meet the admissions criteria must be made prior to sentencing. See information in Chapter 1 and in previous stages in this chapter.

If the person is found guilty and incarcerated, is under the age of 22 and is eligible for special education services; involvement of the person's local school district and/or the **Department of Special Education/Special Education Program** is applicable at this stage.

The **Department of Corrections** is responsible for administration of the state's prison and parole systems. When a person is sentenced to prison, the person is involved in a two to four week process of Admission and Orientation (A&O). For a female this occurs at the Women's Prison in Pierre and for a male at the Jameson Annex in Sioux Falls. Admission includes mental health, chemical dependency and re-entry/Life Skills evaluations or assessments; TABE (educational) testing; record review; criminal history; date calculations and classification (both internal and external). Internal classification refers to where the inmate is housed. The cellblock or roommate assigned is based on the inmate's status as a possible aggressor or victim. External classification refers to the custody level and level of supervision required (maximum, medium or minimum). Orientation includes explanation of prison rules such as those related to visits, use of the commissary, recreation, when/where to eat, how to sign up for school, how to get clean clothes, etc.

Following A&O, the person is initially placed in one of the prison facilities or into a facility that is not state operated in the community, for example, Glory House in Sioux Falls. When placed at a community facility, the inmate is involved in a combination of community services (work for state or local government) and work release (competitive employment) during the day and returns to the facility at night. Placement is based on level of risk, medical, mental health and programming needs. Males with special needs, including developmental disabilities, may be housed in the West Hall Special Needs Unit in the State Penitentiary in Sioux Falls. Females with special needs, including developmental disabilities, are placed at the South Dakota Women's Prison in Pierre.

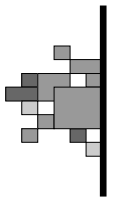
Services available within the correctional system include: food, health, mental health, dental, optometric, recreation, commissary, visiting, mail, telephone, religious/cultural, clothing, etc.

An Individual Program Directive (IPD) is written for each inmate (see definition section) and compliance with it is utilized as part of the basis for parole release. In addition to the IPD, the basis for parole release includes agreement to release conditions and an approved release plan. Included in the IPD are requirements regarding work and programming.

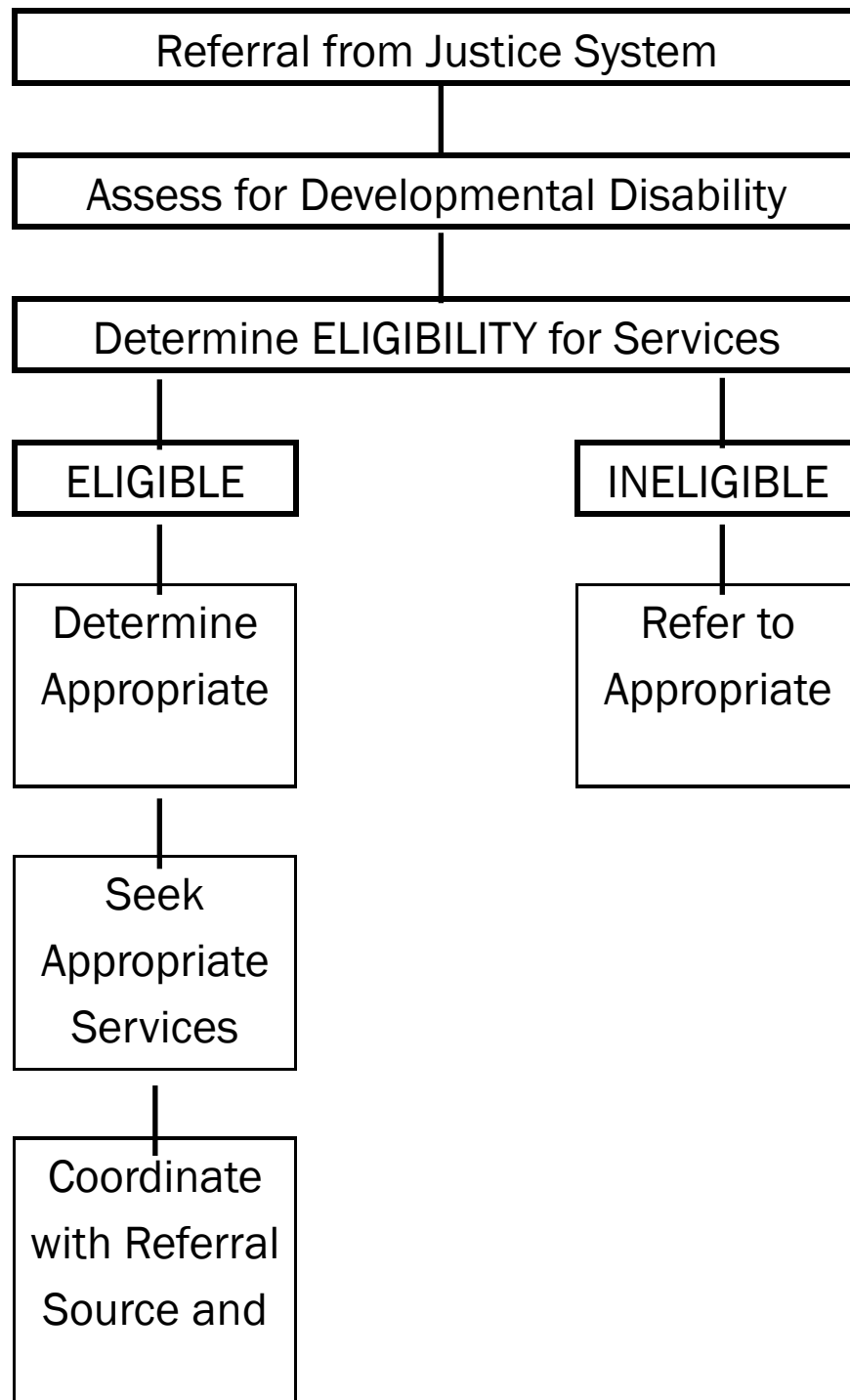
A release plan is developed with the inmate by the assigned case manager within the corrections facility and is reviewed annually by both. The release plan includes availability of community residence and work or means of support after release; treatment needs (chemical dependency, sex offender, mental health and medical needs; re-entry/Life Skill needs. **It is noted that development of an acceptable release plan is very relevant for inmates with developmental disabilities as it is often very difficult to find placement in the community as required.**

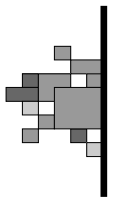
Reclassification of the inmate's level of supervision (maximum, medium and minimum) is reviewed at least annually, as a result of an incident or information or eligibility for change in the inmate's classification states. An inmate can work their way up the levels, i.e., from maximum to medium or vice versa.

When an inmate reaches their parole date, the process for parole is determined by whether the inmate was imprisoned after or before July 1, 1996. Parole hearings for crimes committed prior to July 1, 1996 are discretionary. Parole releases for crimes committed after July 1, 996 are based on the provisions above.

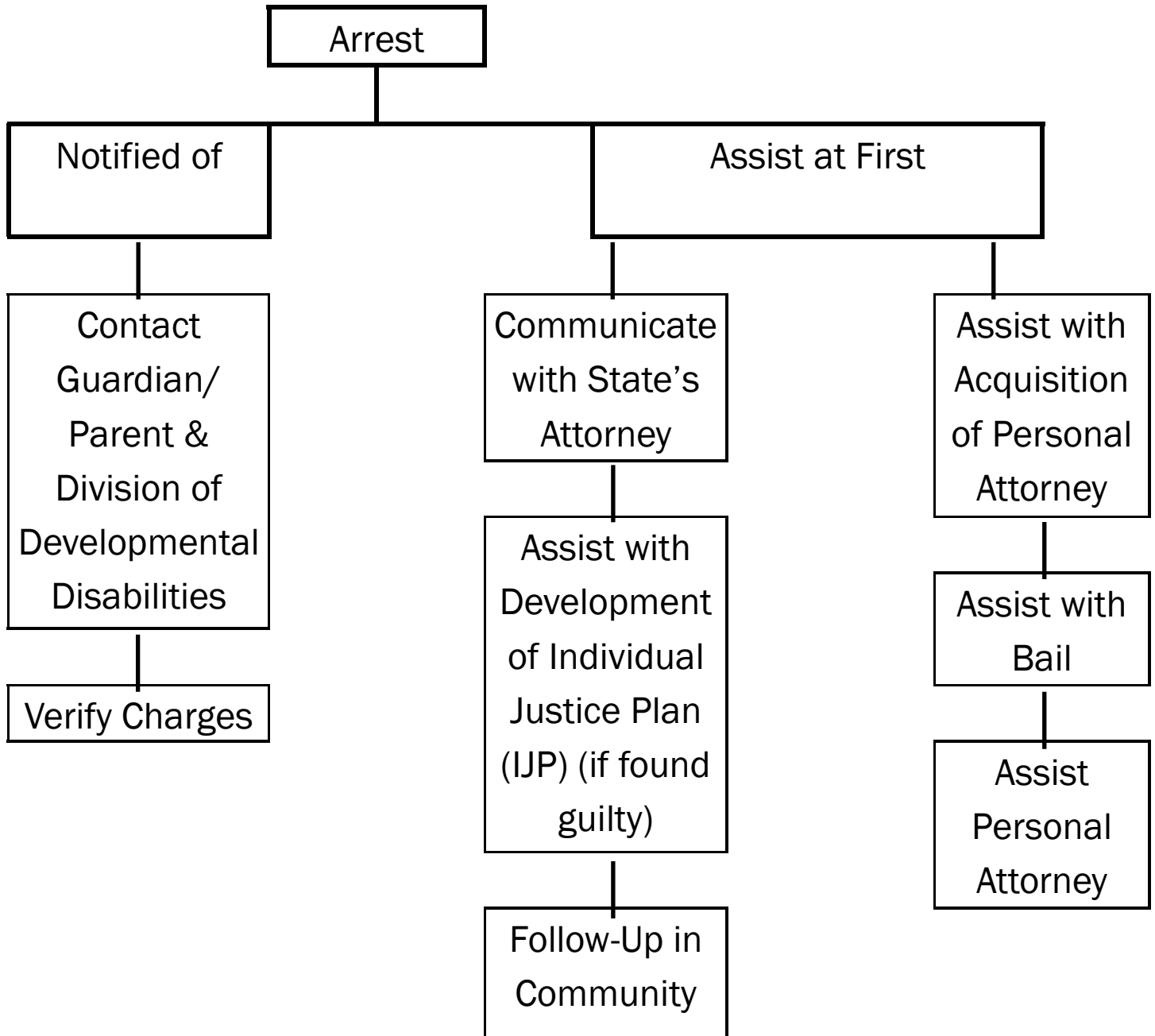


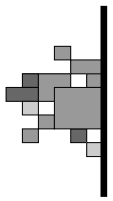
Department of Human Services
Division of Developmental Disabilities



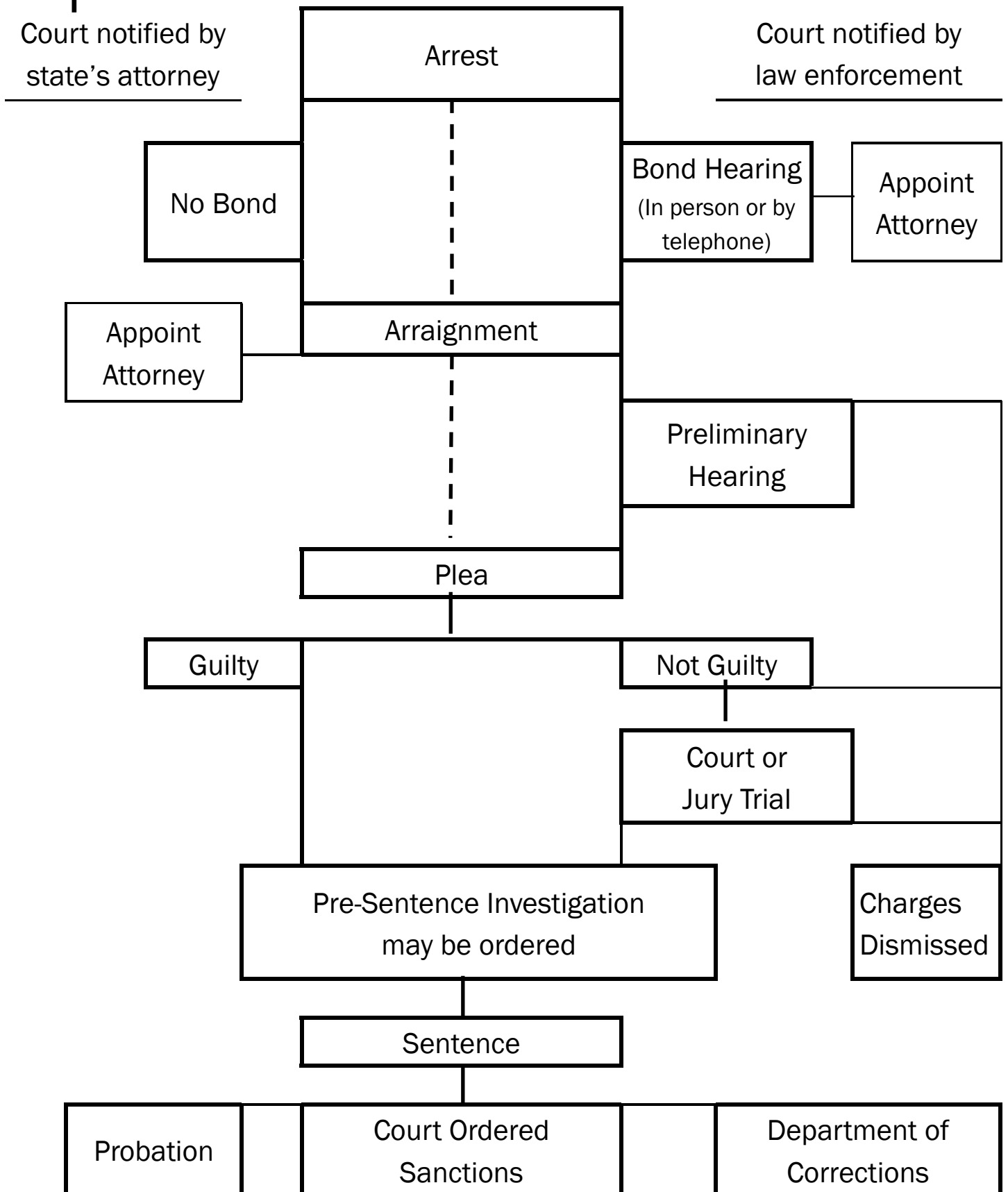


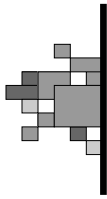
Community Based Developmental Disabilities Service Providers



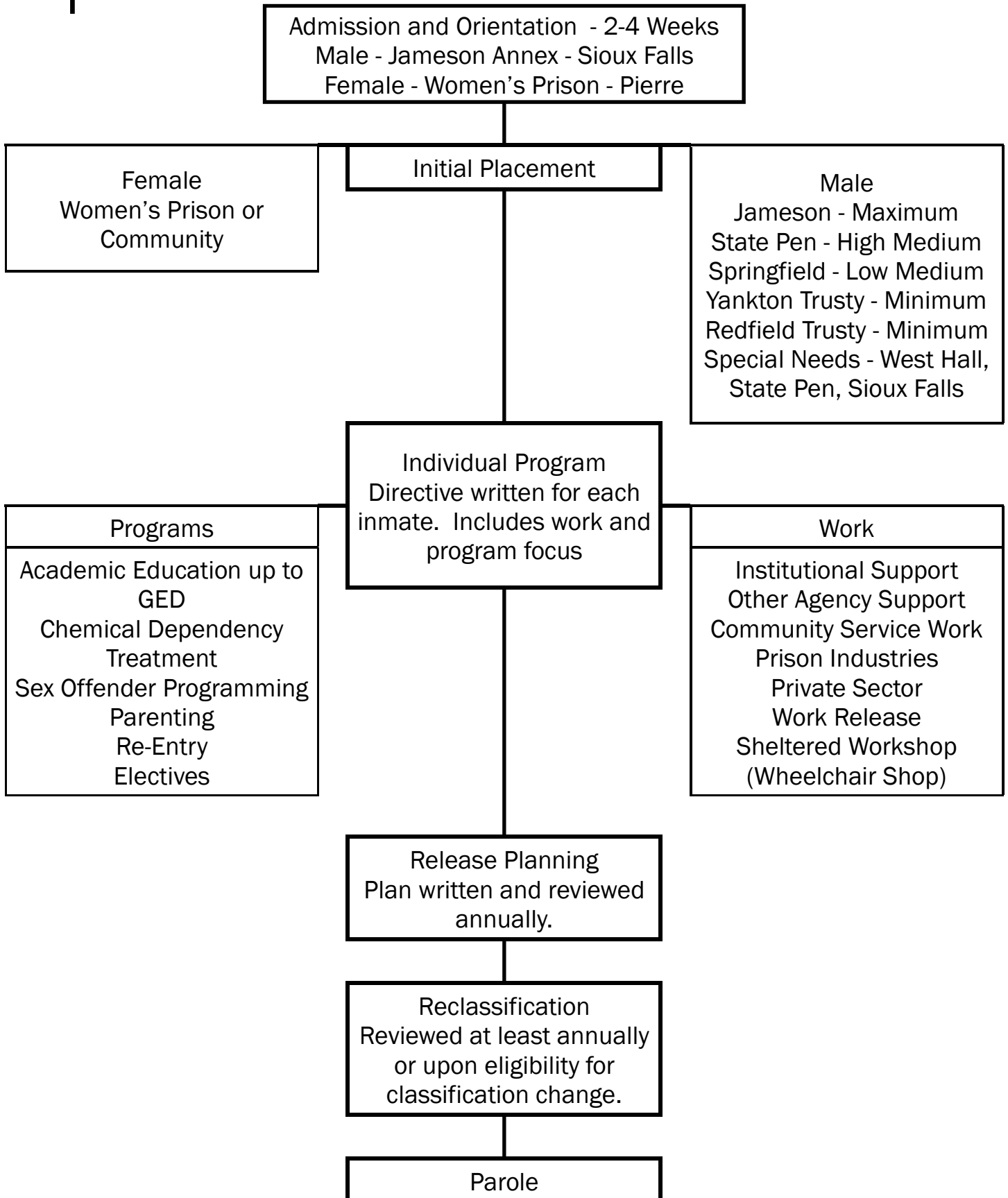


South Dakota Unified Judicial System

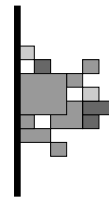




Department of Corrections



Chapter 3



The Individual Justice Plan (IJP) A Planning Process

In the mid 1980's, Eric A. Evans, (Deputy Directory of the Nebraska Advocacy Services at that time) was instrumental in the development of a coordinated planning process known as the **"Individual Justice Plan (IJP)."** The majority of information in this chapter comes from material presented by Mr. Evans at a South Dakota Conference on "DD Offenders & the Criminal Justice System: Alternative Resources for the Justice System and the Human Services System" held in May of 1993.

"While most of us find encounters with the Criminal Justice System disconcerting at the least, for people with developmental disabilities such contacts can be confusing and traumatizing," (Eric Evans, May, 1993). People with serious cognitive impairments, convulsive disorders, or hearing/speech/visual impairments often find the maze of procedures and proceedings of the criminal justice system (procedures that are distressing for most of us) impossible to understand and an alarming and difficult ordeal. Many people with disabilities are placed at a very serious disadvantage at virtually every stage of the criminal justice system process. While the person with a disability and the individuals within the human services system struggle to understand and work within the context of the criminal justice system, persons working within the criminal justice system have an equal desire to more effectively work with persons with developmental disabilities who come into contact with their system. The Individual Justice Plan (IJP) offers a process in which both systems can work cooperatively to most effectively and fairly address the needs of the person with a developmental disability.

Within the context of this chapter, it is impossible to provide the reader with a complete understanding and working knowledge of the Individual Justice Plan Process. Individuals looking for more detailed training material on this planning process are encouraged to call the USD Center for Disabilities at 1-800-658-3080 (Voice/TTY) or the Wegner Health Science Information Center at 1-800-521-2987 and request a free loan of the following video training package.

DD Offenders & the Criminal Justice System: Alternative Resources for the Justice System & the Human Service System - Two video tapes (4 hours and 40 minutes) with training handouts

Professionals within the developmental disabilities service and support system have for many years worked within what is known as a service team in developing an **individual**

service plan for each person served within the service system. It is recognized that this team planning process is somewhat unique to the developmental disability service system and may, in some cases, be problematic for the criminal justice system.

However, increasingly both systems are finding themselves seeking alternative solutions and resources to address persons with a developmental disability who have come into contact with the criminal justice system. The Individual Justice Plan model, developed within the framework of the team planning process, allows for this coordination to take place between the human services and criminal justice systems.

The **Individual Justice Planning (IJP) Process** is a model that is designed both to recognize the capacities and limitations of the offender with a developmental disability and, more importantly, to provide the offender with the capacity and opportunity to make the necessary active choices in relating to the criminal justice/human services systems. Involvement of the person with a disability is essential to the development of the IJP. The limitations imposed by the criminal justice system must be viewed as guidelines within which an IJP Team can design an appropriate individualized plan of justice.

Eric Evans identified the primary purpose of the IJP model as being able to develop alternatives to incarceration while attempting to meet the following minimum set of six criteria:

1. **Accountability** - People with developmental disabilities should be held accountable for their behavior just as anyone else.
2. **Competency** - People with developmental disabilities should be presumed competent and capable of self-management until there has been a legal determination of non-competency.
3. **Due Process** - People with developmental disabilities are entitled to due process whenever their rights are at risk of violation.
4. **Least Restrictive Alternative** - Any intervention or intrusion into the life of a person with a developmental disability should be the least restrictive one possible.
5. **Social Role Valorization** - This is a term used to describe the ultimate goal of services provided to people with developmental disabilities as being to enhance their social image and personal competencies by using, as much as possible, culturally valued means.
6. **Control versus Incarceration** - Emphasis should be placed on bringing together the community resources needed to control the behavior of offenders with a developmental disability, not on removing them from their community.

The **IJP Team Process** has the following purpose: To bring together organizational, professional and volunteer resources that can accept responsibility for the offender with a developmental disability and can develop an appropriate plan in response to the offense. In achieving this purpose, the IJP Team process should seek to meet the following two goals:

1. Meeting Individual Needs

- a. To develop a plan that will provide the person with a developmental disability the services required for them to remain in the community.
- b. To put together an array of services that meets the identified needs of the person.
- c. To utilize those resources and settings that are available to all members of the community.
- d. To increase the skills of the person so that they may participate in and contribute to the community.
- e. To advocate for the person's rights and responsibilities as a citizen and to assist in the understanding and utilization of both.
- f. To support and assist the person's family in meeting the person's needs.

2. Protecting the Community

- a. To develop a structure that addresses the needs of offenders who have a developmental disability while allowing them to continue to learn, to grow, to enhance their social image and person competencies in the least restrictive alternative possible with the non-use of incarceration.
- b. To develop a plan that holds people with developmental disabilities accountable for their criminal behavior.
- c. To provide a structure and set of processes and procedures that will insure the safety of the community.
- d. To determine and provide the support needed to fulfill the responsibilities of organizations, professionals, and volunteers involved with the person.
- e. To implement a more cost-effective response to addressing the offending behavior.

The **IJP Team** must include (at a minimum) the appropriate and involved professionals from both the human services/developmental disabilities system and the criminal justice

system. The involvement of professionals from the criminal justice system will depend on where the person is in the criminal justice process. The **Developmental Disabilities System** should be the point of accountability for the IJP Team organization and the development and implementation of the actual IJP.

The **Basic Components of the IJP Process** include the following:

- Define the behavior that has brought the individual into contact with the criminal justice system as specifically as possible.
- Identify any information about the person that may be lacking but which would help the team to better understand the problem behavior and assign responsibility for procuring the information
 - Ask professionals to contribute information from the person's history; e.g., are the behaviors such that an evaluation by a psychologist or psychiatrist would be helpful?
 - Ask volunteers to describe their knowledge of and insight about the person.
- Attempt to identify the cause and result of the problem behavior.
- Determine the relationship the problem behavior has to other major areas of life activity: e.g., self-care, learning, communication, self-direction, mobility, independent living, and self-sufficiency in residential, vocational, education, social/recreational, financial, medical, and transportation.
- Draft a plan that is specific to the person's needs and consistent with the six IJP criteria discussed earlier.
- Assign appropriate responsibility for carrying out the plan to each member of the team.
- Establish a coordinating mechanism to carry out the plan.
- Present the plan to appropriate entities within the criminal justice system: e.g., defense attorney, prosecuting attorney, court, law enforcement, etc., if they are not already members of the IJP team.
- Implement the plan and monitor the implementation.

The **Individual Justice Plan** should be completed as a part of the person's service planning process. The example Individual Justice Plan format outlined on the next page identifies the areas that should be addressed by the team.

Individual Justice Plan

Name _____ Date of IJP _____

IJP Team Members

Name/Title	Name/Title
1. _____	7. _____
2. _____	8. _____
3. _____	9. _____
4. _____	10. _____
5. _____	11. _____
6. _____	12. _____

The plan should be reviewed at least monthly by the person's Service Coordinator and at least annually by the entire IJP team or as required by the Court.

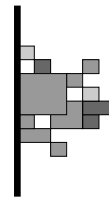
Areas to be addressed by the IJP Team

Each area on the IJP should address: accountability; competency; due process; normalization; least restrictive alternative; and control versus incarceration.

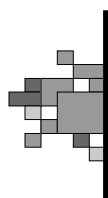
- A. Residential
- B. Vocational
- C. Social/Recreational
- D. Education
- E. Medical/Dental
- F. Counseling
- G. Advocacy
- H. Income/Money Management
- I. Family
- J. Transportation
- K. Other Considerations

Chapter 4

Definitions



As professionals in the human services system and the criminal justice system work cooperatively to meet the needs of persons with developmental disabilities, it becomes very important that both systems understand each other's terminology. This listing of key words and phrases is divided into two sections - **Human Services Terminology** and **Criminal Justice Terminology**.



Human Services Terminology

Abnormal Behavior - A general term referring to behavior that is unusual to the degree that it exceeds the boundaries of what society views as normal.

Acting Out - Expressions of unconscious emotional conflicts or feelings in actions rather than words (self- abusive, aggressive, violent and/or disruptive behaviors).

Active Treatment - Implementation of specialized and generic training, treatment, health services and related services that lead to the acquisition of the behaviors necessary for the person to function with as much self-determination and independence as possible and to prevent regression or loss of current functional status.

Adaptive Behavior - Collection of conceptual, social and practical skills that people have learned so they can function in their everyday lives. A person's ability to effectively meet social and community expectations for personal independence, maintenance of physical needs, acceptable social norms and interpersonal relationships. Significant limitations in adaptive behavior impact a person's daily life and affect the ability to respond to a particular situation or to the environment.

Adjustment Training Centers (ATC) - Community based service providers certified by the Department of Human Services (DHS) to provide supports and services to people with developmental disabilities.

Advocacy - The process of actively speaking out, writing in favor of, supporting, and/or acting on behalf of oneself, another person, or a cause. Advocacy can be any action to assure the best possible services for or intervention in the service system on behalf of an individual or group.

Advocate - Anyone who speaks or acts on behalf of oneself or another person.

Americans with Disabilities Act (ADA) - Federal legislation that gives civil rights protection to people with disabilities. The ADA was enacted into law in July 1990.

Assessment - A collecting and bringing together of information about a person's treatment, training, educational and support needs, which may include social, psychological, medical, vocational and educational evaluations used to determine appropriate programs or services.

Assistive Technology - The systematic application of technology, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, persons with disabilities in areas including education, employment, support employment, transportation, independent living and other community living arrangements. This term includes assistive technology devices and assistive technology services.

Attention Deficit Hyperactivity Disorder (ADHD) - A childhood mental disorder characterized by inattention (such as distractibility, forgetfulness, not finishing tasks, and not appearing to listen), by hyperactivity and impulsivity (such as fidgeting and squirming, difficulty in remaining seated excessive running or climbing, feelings of restlessness, difficulty awaiting one's turn, interrupting others, and excessive talking) or by both types of behavior. Behavior must interfere with academic, social or work functioning, with impairment existing in at least two settings. Onset is before age seven but can persist into adulthood.

Augmentative Communication - Any approach designed to support, enhance or supplement the communication of people who are not independent verbal communicators in all situations.

Autism - A complex developmental disability that typically appears during the first three years of life and is a result of a neurological disorder that affects the functioning of the brain. Autism impacts the normal development of the brain in the areas of social interaction and communication skills. Children and adults with autism typically have difficulties in verbal and non-verbal communication, social interactions and leisure or play activities. Autism is the most common of five disorders coming under the umbrella of Pervasive Developmental Disorders (PDD).

Barrier-Free Facility - A building or other structure that is designed and constructed so that people with mobility impairments (such as those in wheelchairs) can move freely throughout and access all areas without encountering architectural obstructions.

Borderline Intellectual Functioning - A classification of mental ability covering persons with IQ scores in the range of 71 to 84, with only slight impairments in adaptive behavior.

Behavior Intervention Plan - After collecting data on a person's behavior and after developing a hypothesis of the likely function of the behavior (functional assessment) this plan uses positive supports to eliminate factors that cause the problem behavior and teaches the desired replacement behavior.

Case History - Information compiled, typically from service and support providers, family, and involved others, regarding the person's developmental, medical, social, educational, vocation and familial history.

CAST*MR (Competence Assessment to Stand Trial) - A standardized instrument designed to assess the competence of persons who have mental retardation to stand trial. The test has separate sections to measure understanding of basic legal concepts, skills to assist defense, and understanding case events. To obtain the test, call IDS Publishing at 1-614-885-2323 or sales@idspublishing.com.

Cerebral Palsy (CP) - A condition caused by damage to the motor areas of the brain, usually occurring before, during or shortly following birth and disrupting the brain's ability to adequately control movement and posture. CP can range from mild to severe.

Citizen Advocacy - A one-to-one relationship between a capable volunteer and a person with a developmental disability who requires the assistance of an advocate in order to become a more independent, active and contributing member of society. It is also a method of assisting those persons to deal with problem situations, to protect their rights and to facilitate their integration into the community. It is not meant to replace the professional services that persons with developmental disabilities need and deserve, but to complement them with a supportive relationship with a person from the community.

Civil Commitment - Order for involuntary commitment of person posing immediate danger to self or others - Protective custody. SDCL 27B-7-37, A county review board may order the involuntary commitment of a person if the review board finds by clear and convincing evidence supported by written findings of fact and conclusions of law that the person has a developmental disability, and that due to the developmental disability the person poses an immediate danger of physical injury to self or others making it necessary or advisable to receive appropriate supports and services. If the person is found to meet the criteria for involuntary commitment, the county review board may order the person to be placed under the control and care of the Department of Human Services for placement in appropriate programs.. If the person refuses to comply with this order, the board may direct a law enforcement officer to take the person into protective custody.

Civil Rights - The rights of a citizen of the United States that deal with the right to due process, informed consent, appeal, petition for change, equal protection under the law, adult patterns of behavior, education, equal opportunity, and opportunities in a least restrictive setting.

Cognitive - A term that describes the process people use for remembering, reasoning, understanding, problem solving, evaluating and using judgment. Simply put, it is what a person knows and understands.

Cognitive Development - The development of skills necessary for understanding and organizing the world, including such perceptual and conceptual skills as discrimination, memory, sequencing, concept formation, generalization, reasoning, and problem solving.

Cognitive Impairments - Relates to impairments of a person in their ability or level of proficiency in thinking, processing information, and knowledge.

Communication Disorders - Inability to communicate effectively due to a hearing loss, a speech disorder, or a language disorder.

Communication Assistive Devices - Any device that helps a person in communicating with others such as hearing aids, picture books, computers, electronic communication devices, communication boards, or hands free telephones.

Community Training Services (CTS) - The only funding source available for services for people with developmental disabilities that is strictly state funded. It is typically utilized for people who need less intensive services or who do not meet the financial eligibility for ICF/MR (Intermediate Care Facility for Mentally Retarded) or HCBS (Home and Community Based Services) funded services. The three main services provided are: pre-vocational training, community living training and expanded follow-along support.

Conduct Disorder - A repetitive and persistent pattern of behavior in children and adolescents in which the rights of others or basic social rules are violated. Behaviors that may be exhibited: aggression toward people and animals, destruction of property, deceitfulness, lying or stealing and serious violation of rules.

Confidentiality - The process of keeping private information private; notifying involved persons for permission prior to the sharing of information.

Consent - Compliance in or approval by a person with a disability or his/her legal guardian of what is done or is proposed that affects that person's life.

Conservatorship - Legal relationship between a protected person and one or more individuals (conservator) appointed by the court to make decisions on behalf of a protected person limited to the management of the property and financial affairs. As with guardianship, a conservatorship may be full, limited, temporary or joint (see definition of guardianship for descriptions).

Consumer - A person with developmental disabilities.

Co-Occurring Disabilities - Combination of developmental disabilities and mental illness; developmental disabilities and drug or alcohol addiction. Also referred to as dual diagnosis or multiple disabilities.

Developmental Disability (DD) - SDCL 27B-1-18 defines developmental disability as any severe, chronic disability of a person that:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairment;
2. Is manifested before the person attains age twenty-two (22);
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and
5. Reflects the person's need for an array of generic services, met through a system of individualized planning and supports over an extended time, including those of a life-long duration.

Diagnostic and Statistic Manual of Mental Disorders (4th Edition Revised) (DSM IV) - A classification system for mental illnesses developed by the American Psychiatric Association.

Disclosure - To permit access to or the release, transfer or other communication of a person's records or the personally identifiable information contained in those records to any party, by any means, including oral, written or electronic.

Distractibility - Attention drawn too frequently to unimportant or irrelevant external stimuli. Example: While being interviewed, a subject's attention is repeatedly drawn to noise from an adjoining office, a book that is on a shelf, or the interviewer's school ring.

Dual Diagnosis - See **Co-Occurring Disabilities**.

Empowerment - The interaction with people with disabilities and their families in such a way that they are afforded the greatest possible control and choice over all aspects of their lives and the lives of their children.

Entitlement - To give a right, claim or legal title to, qualify.

Epilepsy - A neurological condition that makes people susceptible to seizures. A seizure is a change in sensation, awareness or behavior brought about by a brief electrical disturbance in the brain. Seizures vary from a momentary disruption of senses to short periods of unconsciousness or staring spells to convulsions (rapidly alternating contractions of the muscles causing irregular movement of the limbs or body). Doctors treat epilepsy primarily with seizure preventing medicine. These medicines are not a cure but they control seizures in the majority of people with epilepsy.

Equal Access - The elimination of barriers that prohibit any person with a disability from participating in activities or using facilities and services typically utilized by people without disabilities.

Expressive Language Disability/Disorders - A learning disability in which a person has problems expressing him/herself through speech or has difficulties in language production.

Fetal Alcohol Spectrum Disorder (FASD) - Fetal Alcohol Spectrum Disorder (FASD) is an umbrella term describing the range of effects that can occur in a person whose mother drank alcohol during pregnancy. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. FASD is characterized by brain damage, facial deformities, and growth deficits. Heart, liver and kidney defects also are common, as well as vision and hearing problems. People with FASD have difficulties with learning, attention, memory, and problem-solving. Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effect (FAE) are other terms used to refer to specific problems that are included in FASD.

Functional Assessment - An approach that incorporates a variety of techniques and strategies (a problem solving approach) to diagnose the cause/determine the purposes of specific behavior and to identify likely interventions intended to address problem behaviors. This assessment determines “why” the person’s behavior occurs in the first place.

Generic Programs/Services - Those human service programs and services available to all South Dakota citizens regardless of whether or not they have a developmental disability.

Guardianship - Legal relationship that give an individual(s) or agency (the guardian) the responsibility for the personal affairs of the protected person. There are four types:

- **Full Guardianship** provides the guardian with decision making authority and responsibility over the protected person’s personal affairs;
- **Limited Guardianship** gives the guardian decision-making authority and responsibility over only selected areas that the protected person has been determined unable to manage by him/herself, i.e., health care decisions;
- **Temporary Guardianship** is the type the court may appoint for a 90-day period if it is felt that such an appointment is in the persons best interest; and
- **Joint Guardianship** is when more than one person acts as guardian at the same time and shares in the decision-making authority and responsibilities.

Habilitation - Training available to people who need to acquire particular skills and/or functional abilities they did not possess previously, such as independent living skills or vocational skills.

Hearing Impaired - Any person who has a hearing loss that required special assistance (such as a hearing aid) or educational adaptation. This term includes both persons who are hard of hearing and who are deaf.

Home and Community Based Services (HCBS) - Title XIX Medicaid funded programs/ services, purchased by the Division of Developmental Disabilities from Adjustment Training Centers (ATCs), based on a waiver of federal regulations pertaining to the ICF/MR program and with the same eligibility criteria. HCBS funding can be used for children or adults. Examples of services provided: service coordination (case management), training and habilitation services, pre-vocational training and supported employment. This service offers 24-hour services as needed by the eligible person.

Incompetent - See **Mentally Incompetent to Proceed Stand Trial**.

Individuals with Disabilities Education Act (IDEA) (Part B) - Federal legislation designed to provide students with disabilities ages 3-21 equal opportunities to participate in and benefit from public education. Part B has the responsibility of assuring that children with disabilities receive a free appropriate public education (FAPE) in the least restrictive environment (LRE).

Inclusion - The use of the same community resources that are used by and available to other citizens, participation in the same community activities, living in homes, apartments or other home-like environments, working in community employment, developing friendships/relationships.

Independence - The extent to which persons with developmental disabilities exert control and choice over their own lives.

Individual Justice Plan (IJP) - A coordinated planning process allowing for staff from the developmental disabilities/human services systems and the criminal justice system to work cooperatively, in an organized manner, to most effectively and fairly address the needs of the person with a developmental disability.

Individual Service Plan - Plan developed by the person and their service team that designates the services and supports needed by the person.

Individualized Educational Program (IEP) - A written educational plan for a specific student based on a multidisciplinary evaluation (including, as applicable, health vision, hearing, social and emotional status; general intelligence; academic performance; communicative status; and motor abilities) and developed by the IEP team (parents of the student, regular education teacher, special education teacher, individuals who have knowledge or special expertise regarding the student, etc., and the student) and which acts as a written record of decisions made at the IEP meeting.

Individualized Plan for Employment (IPE) - Written document completed by the rehabilitation consumer and the Rehabilitation Counselor that delineates services and responsibilities jointly agreed to by both parties.

Informed Consent - Ability to make a decision, particularly a medical decision, requiring an understanding of 1) the nature of the proceedings; 2) the foreseeable risks; 3) the expected benefits; and 4) the available alternatives.

Intermediate Care Facility for the Mentally Retarded/Developmentally Disabled (ICFMR/DD) - Title XIX Medicaid funded services for people with developmental disabilities who have significant service and support needs that require 24-hour services in certified facilities including the South Dakota Developmental Center (SDDC).

Intervention - Action taken to correct, remediate, or prevent identified or potential medical or developmental problems.

Intelligence Quotient (IQ) - A score obtained from an intelligence test that provides a measure of mental ability in relation to age.

Inventory for Client and Agency Planning (ICAP) - A 16-page booklet that is used to assess adaptive behavior (motor skills, social and communication skills, personal living skills, and community living skills) and maladaptive behaviors and gathers additional information to determine the type and amount of special assistance that a person with disabilities may need. Completion is required for people receiving services in adjustment training centers (ATCs).

Language Development - Growth of expressive and receptive communication skills, and skills related to the understanding and production of language.

Learning Disability (LD) - A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to people who have learning problems that are primarily the result of vision, hearing or motor disabilities; mental retardation; emotional disturbance; or environmental, cultural or economic disadvantage. SDCL 24:05:24.01:18

Legal Advocacy - Litigating and legislating to establish the legal rights of persons with developmental disabilities to insure that those rights are not violated. This form of advocacy may be used to benefit individuals or classes of people.

Medicaid - A federal/state funded program authorized by Title XIX of the Social Security Act to provide medical assistance for certain people and families with low incomes and resources who fall into five broad coverage groups: children, pregnant women, adults in families with dependent children, people with disabilities, and people over age 65.

Medicare - A federal government insurance program that provides medical expense coverage to persons over age 65 or if the person is eligible for Social Security benefits. It is comprised of two parts: Hospital Insurance (Part A) and Medical Insurance (Part B).

Medication Management - The monitoring and management of different medications as prescribed by a physician to assure the most effective results of the medications and reduce possible complications.

Mentally Incompetent to Proceed/Stand Trial - The condition of a person who is suffering from a mental disease, developmental disability, as defined in SDCL 27B-1-18, or psychological, physiological or etiological condition rendering them mentally incompetent to the extent that they are unable to understand the nature and consequences of the proceedings against them or to assist properly in their defense. SDCL 23A-10A-1

Mental Illness - Refers to severe and persistent forms of mental disorder such as depression, schizophrenia, bipolar disorder, panic and severe anxiety disorder, obsessive-compulsive disorder, that affect the person's brain.

Mental Retardation (MR) - A disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social and practical adaptive skills. This disability originates before the age of 18. Mental retardation refers to a particular state of functioning that begins in childhood, has many dimensions, and is affected positively by individualized supports. (See the Introduction section in this handbook for further information regarding the difference between Mental Illness and Mental Retardation). Other terms used more broadly are developmental disabilities or intellectual disorders or cognitive disorders.

Multidisciplinary - Refers to two or more professionals (like psychologists, social workers, etc.) working together and sharing information in the evaluation, assessment, and development of a person's individual education or service plan.

Neurological - Pertains to the nervous system.

Neurological Dysfunction/Impairment - The inability to perform sensory or motor functions appropriately due to damage or deficiency in the nervous system of the body.

Outcome - A desired behavior or skill to be acquired as a result of intervention strategies; result or aftermath of action.

People First Language - The respectful way of talking or writing about persons with disabilities in a manner that identifies and emphasizes the “person first” and the disability second. The use of people first language encourages that all references about a person’s needs, disabling condition, use of specialized equipment, etc., are stated following the reference to the person. Example - Instead of saying, “A cerebral palsied man confined to a wheelchair,” say “A man with cerebral palsy who uses a wheelchair.”

Perception - A person’s ability to consciously recognize and interpret what is seen, heard or felt.

Positive Behavior Supports - Proactive intervention for problem behavior that examines the cause of the problem behavior, eliminates the factors that cause it and prevents it from happening again.

Protected Person - Person who has been determined by the court to be in need of a guardian. Therefore, a protected person for whom a guardian has been appointed has been determined to be unable to make decisions about various personal affairs of their life without the assistance or protection of a guardian. These decisions can involve issues relating to the person’s health, care, safety, habilitation, therapeutic needs, financial affairs, and other areas of the protected person’s life.

Protection and Advocacy (P&A) - The Federal Developmental Disabilities Act provides that each state have a system for protecting the rights of persons with developmental disabilities. South Dakota Advocacy Services is the independent, private, non-profit, tax-exempt corporation designated by the Governor to assist in providing this protection and advocacy.

Protective Services - Services that assist people who are unable to manage their own resources or to protect themselves from neglect, exploitation, or hazards. Examples of such services are outreach and referrals, counseling, case management, follow-along, guardianship, financial support, legal aid, and housekeeping assistance.

Qualified Mental Retardation Professional (QMRP) - Any person with at least one year of experience working directly with mental retardation or other developmental disabilities and is either a doctor of medicine or osteopathy, a registered nurse, or a person who holds at least a bachelor’s degree in a professional category. (27B-1-17)

Rehabilitation - Refers to the process (or programs) aimed at teaching people who are recently disabled the fundamental skills for independence.

Rehabilitation Counselor - Position within the Department of Human Services/Division of Rehabilitation Services that provides vocation rehabilitation services (eligibility, vocational counseling, referral and placement plans) in order to obtain employment and/or

independent living for people with substantial vocational impediments due to physical or mental disabilities.

Resource Coordinator - Position within the Department of Human Services/Division of Developmental Disabilities that coordinates service delivery to people with identified needs, such as developmental disabilities, located outside a state residential facility; monitors activities of service providers to ensure services are delivered as specified in the contract; advocates for people receiving services and manages, maintains and verifies data necessary for eligibility for programs to establish funding levels.

Section 504 - A part of the Rehabilitation Act of 1973. This section states that no program or activity receiving federal funds can exclude, deny benefit to, or discriminate against any person on the basis of disability. It also requires access for people with a disability to all public buildings.

Seizure Disorders - See Epilepsy.

Self-Advocacy - Representing one's own rights and interests and seeking solutions to a problem by oneself. This form of advocacy is the goal of all other forms of advocacy.

Service Coordination - Assistance to obtain medical, habilitation, social and other related services and supports such as guardianship, legal, self-advocacy, housing, follow-up outreach, referral, financial or payee assistance. (Also referred to as case management).

Service Coordinator - Staff person at an Adjustment Training Center (ATC) responsible for overall coordination and monitoring of a person's individual service plan. (Also referred to as case manager or program coordinator.)

Service Plan - Plan developed by the person and their service team that designates the services and supports needed and wanted by the person.

Service Team - Group of people, including the person, responsible for assisting the person in identifying personal goals and for designing a service plan to assist them to accomplish those goals.

Short Attention Span - An inability to focus attention on a task for a sustained period, often more than a few seconds or minutes.

Social Security Disability Income (SSDI) - Program financed by Social Security taxes paid by workers, employers and self-employed persons. Disability benefits are payable to workers with disabilities, widow(er)s or adults with disabilities since childhood who are otherwise eligible. The monthly disability benefit payment is based on the Social Security earnings record of the insured worker on whose Social Security the disability claim is filed.

Speech Disorder/Impairment - Disorganization of speech. The inability to produce certain elements, faulty, or distorted performance or functions in particular sounds, letters, words, or gestures are outside one's power or produced or perceived as imperfect. Examples of speech impairments are stuttering, impaired articulation, language impairment, or voice impairment.

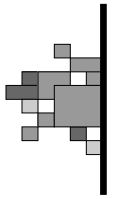
Supplemental Security Income (SSI) - Program financed through general tax revenues. Benefits are payable to adults or children who have disabilities, meet the income, resource and living arrangement requirements and are otherwise eligible. The monthly payment is standardized in all States, but not everyone gets the same amount because it may be supplemented by the State or decreased by other income and resources.

Supports - The resources and individual strategies necessary to promote the development, education, interests and personal well-being of a person with mental retardation and other disabilities. Supports can be provided by a parent, friend, teacher, psychologist, doctor, or by another appropriate person or agency.

Transition - The process of bridging the time and environments between two settings, programs, or life situations (e.g., from school to adult services, or from an adult service/support system to independent work and living situations).

Transition Plan - A designed Program outlining the transition of a person between two settings as described in **Transition** above. The plan identifies the services needed for the person, the activities that must occur, and the timelines and responsibilities for completion of these activities.

Traumatic Brain Injury (TBI) - Injuries that typically result from accidents in which the head strikes an object. The TBI can significantly affect many cognitive, physical and psychological skills. Physical deficit can include ambulation, balance, coordination, fine motor skills, strength and endurance. Cognitive deficits of language and communication, information processing, memory and perceptual skills are common. Psychological status is also often altered.



Criminal Justice Terminology

Acquittal - A finding that the defendant is not guilty of the charges brought by the government. This finding may be reached by the trial judge either in a case tried before the judge or on a motion for a judgment of acquittal made by a defendant or the judge in a jury trial. The jury may make such a finding in a case tried before it.

Adjudicated - Coming under the protection or guardianship and jurisdiction of the court.

Admission and Orientation (A&O) - New inmates go through A&O when they arrive in prison. A&O takes approximately 20 days. Inmates are assessed for physical and mental health, education, chemical dependency and sex offender needs, if warranted by the inmate's crime or history. The inmate's classification process begins during A&O to determine the inmate's risk level and recommended placement.

Adult Corrections System - Consists of the three main adult facilities and four trusty units.

Adult - A person who has reached the age of majority, which is eighteen years of age in South Dakota (or a person under age 18 transferred to adult court).

Affidavit - A written document in which the signer swears under oath before a notary public or someone authorized to take oaths (like a County Clerk) that the statements in the document are true. In many States, a declaration under penalty of perjury that does not require oath taking before a notary is the equivalent of an affidavit.

Appeal - Review of a case by a higher court.

Appearance Bond - A written instrument with a promise to pay money or perform other acts, guaranteeing the coming into court by a party summoned in an action.

Arraignment - A court hearing where a person accused of a crime is advised of the charges, informed of his constitutional rights and asked to plead guilty or not guilty.

Arrest - A law enforcement officer's detaining a person or otherwise leading that person to reasonably believe that they are not free to leave.

Arrest Warrant - An order (writ) of a court that directs a law enforcement officer (usually a sheriff) to arrest and bring a person before a judge.

Attorney (lawyer) - Person who has been qualified by a state or federal court to provide legal services including representing a person accused of a criminal offense in court.

Bail - The release of a person charged with an offense prior to trial under specified financial or non-financial conditions designed to ensure the person's appearance in court when required.

Booking - A law enforcement administrative action officially recording an arrest of a person including the identification of the person, the place, time, authority, and the reason for the arrest.

Bond - In a criminal case, the surety bond assures the appearance of the defendant or the repayment of bail forfeited upon the defendant's failure to appear in court.

Brief - A written statement of the facts of a case, the law and an argument of how the law applies to the facts.

Burden of Proof - The level or quality of proof that a party needs to prove their case. In criminal cases, the government has the burden of proof, and that burden is much higher: A verdict of guilty requires the government to prove the defendant's guilt "beyond a reasonable doubt."

Charge - An accusation contained in a criminal complaint.

Classification System - For the South Dakota Department of Corrections, a standardized, objective system involving initial and reclassification processes based predominantly on prediction of risk (including risk of escape, violence and dangerousness) and is used for classification of inmates. Each inmate's classification is reviewed at least annually by the classification board. There are four custody levels: maximum, high medium, low medium or minimum.

Commitment - A judicial or non-judicial process by which a person or entity with the authority to do so directs a person to penal confinement or to a specific health facility for treatment. An example would be a judge's order sending someone who has been found to have a mental disease or developmental disability to the custody of an approved facility having residential capability. (23A-10A-4) An approved facility means the Human Services Center; the state developmental center; an adjustment training center; a mental health center; or other facility approved by the Department of Human Services for placement or treatment of mentally ill or developmentally disabled persons. (23A-10A-13)

Competent - In general, the term means being capable of doing a certain thing; capacity to understand and act reasonably. A criminal defendant is competent to stand trial if they have sufficient present ability to consult with their lawyer with a reasonable degree of rational understanding and has a rational as well as a factual understanding of the proceedings against them.

Complaint - The first document filed with the court (actually the county clerk of courts) by a person or entity claiming legal rights against another.

Conviction - The result of a criminal trial in which the defendant has been found guilty of a crime.

Count - An allegation in an indictment charging a defendant with a crime. An indictment may contain allegations that the defendant has committed more than one crime. The separate allegations are referred to as counts of the indictment.

Court - An agency of government authorized to resolve legal disputes. Judges and lawyers sometimes use the term “court” to refer to the judge, as in “the court has read the pleadings.”

Court Order - A written direction by the court.

Court Services Officer - An employee of the Unified Judicial System who conducts pre-dispositional reports, pre-sentence investigations and recommends to the sentencing judge plans for dealing with juvenile and adult offenders who may be placed on probation. Such a person is trained to provide a wide variety of assistance to judges, offenders and the community at large.

Court Trial - A trial in which the judge decides factual as well as legal questions and makes the final judgment.

Court Representative - Individual appointed by the court to make investigations and recommendations with authority to speak on behalf of the Court.

Crime - Conduct that violates criminal statutes.

Criminal - Person convicted of a crime.

Culpability - The degree to which the accused was or was not capable of appreciating the wrongfulness of the criminal act when it was committed. Sufficiently responsible for criminal acts or negligence to be found at fault and liable for conduct. Sometimes, culpability rests on whether the person realized the wrongful nature of their actions and thus should take the blame.

Custody - As applied to a person in a criminal justice situation, the restraint and physical control over persons as to insure their presence at any hearing or the actual imprisonment resulting from a criminal conviction.

Defendant - Person charged with a crime or person for whom civil relief is sought, usually a monetary judgment.

Deposition - The taking and recording of testimony of a witness under oath before a court reporter in a place away from the courtroom before trial. It is part of permitted pre-trial discovery (investigation).

Detain - To hold or keep an individual in custody.

Diminished Capacity - Although the accused person was not insane due to emotional distress, physical condition or other factor, they could not fully comprehend the nature of the criminal act they are accused of committing.

Dismiss - The ruling by a judge that all or a portion of the plaintiff's lawsuit is terminated (thrown out) at that point without further evidence or testimony.

Disposition - The court's final determination of a lawsuit or criminal charge.

Diversion - The official halting or suspension of formal criminal proceedings against an alleged first time offender in lesser crimes to perform community services, make restitution for damage due to the crime, obtain treatment for alcohol or drug problems and/or counseling for antisocial or mentally unstable conduct.

Due Process - A fundamental principle of fairness recognized in all legal matters, both civil and criminal, especially in the courts. All legal procedures, including notice of rights, must be followed for each individual so that no prejudicial or unequal treatment will result.

Due Process Hearing - A formal legal proceeding presided over by an impartial public official who listens to both sides of a dispute and renders a decision based upon the law.

Evidence - Information in the form of testimony, documents, or physical objects that is presented in a case to persuade the fact finder (judge or jury) to decide the case for one side or the other.

Expert Witness - A person with specialized training and experience about particular subject matter who testifies in a case to offer an opinion on an issue in the case based on their special knowledge.

Fact - An actual thing or happening that must be proved at trial by presentation of evidence and which is evaluated by the jury or the judge.

Felon - Person who has been convicted of a felony.

Felony - A serious offense punishable by imprisonment in the State Penitentiary.

Fraud - The intentional use of a deceit, a trick or some dishonest means to deprive another of their money, property or a legal right.

Gag Order - An order by a judge which prohibits the attorneys and the parties involved in a pending lawsuit or criminal prosecution from talking to the media or to the public about a specific case.

Good Cause - A legally sufficient reason for a ruling or other action by a judge.

Grand Jury - A group of citizens who listen to the government present evidence of criminal activity by person or persons in order to determine whether there is enough evidence to justify an indictment charging the person or persons with a crime.

Guardian Ad Litem - A person appointed by the court only to take legal action on behalf of a minor or an adult not able to handle their own affairs.

Guilty - Having been convicted of committing a crime or having admitted to the commission of a crime.

Guilty Plea - A criminal defendant's admission to the court that they committed the offense they are charged with and their agreement to waive the right to trial. If the court accepts the plea, the case proceeds to sentencing.

Guilty Verdict - A verdict convicting a criminal defendant of a charge or charges. When a verdict of guilty is returned, the court orders a pre-sentence investigation of the defendant and sets a sentencing date.

Hearing - A proceeding without a jury in which evidence or argument and witnesses is heard by a judicial officer, grand jury, or other governmental unit to determine some issue of fact or both issues of fact and law.

Indictment - A charge of a felony voted by a grand jury based upon a proposed charge, witness testimony and other evidence presented by the state's attorney.

Indigent - A person without sufficient income to afford an attorney for defense in a criminal case. If the court finds a person indigent, the court must appoint a public defender or other attorney to represent the person.

Individual Justice Plan (IJP) - A coordinated planning process allowing for staff from the developmental disabilities/human services systems and the criminal justice system to work cooperatively, in an organized manner, to most effectively and fairly address the needs of the person with a developmental disability.

Informed Consent - Agreement to do something or to allow something to happen only after all relevant facts are known.

Infraction - An offense punishable by fine or other penalty, but not by incarceration, e.g., minor traffic violations.

Initial Appearance - Following an arrest, the appearance of a defendant before a magistrate judge, who informs the defendant of the nature of the charges against them. The defendant is also informed of their rights to be represented by counsel, to remain silent, and to have a preliminary examination. The magistrate judge then decides whether to detain the defendant or to release them on bail.

Inmate - Any person incarcerated by virtue of a judicial order or other lawful process in any Department of Corrections facility.

Intensive Probation Supervision Program - A community-based sentencing option for seriously at risk offenders with high needs who have received a suspended commitment to the Department of Corrections. Clients are those who can safely be managed in the community but who are too high risk/high need for traditional probation.

Involuntary Commitment and Board Ordered Care - The proceedings directing admission for treatment of a person with a developmental disability and is in need of immediate intervention because there is an immediate danger to themselves or to others.

Judgment - A final order of the court that resolves the case and states the rights and liabilities of the parties.

Judicial Proceedings - Any action by a judge such as trials, hearings, petitions or other matters before the court.

Jurisdiction - The legal authority of a court to hear and decide a certain type of case.

Jury - A group of citizens whose duty is to weigh evidence fairly and impartially and decide the facts in a trial (see **Petit Jury**) or to decide whether evidence against a defendant is sufficient to file an indictment charging them with a crime (see **Grand Jury**).

Jury Trial - A trial in which the case is presented to a jury and the factual questions and final judgment are determined by the jury.

Litigation - Any lawsuit or other resort to the courts in order to determine a legal question or matter.

Magistrate - A generic term for any judge of a court or anyone officially performing a judge's functions.

Mandatory Minimum Sentence - A statutorily defined minimum term of imprisonment that the court is required to impose on the defendant at sentencing.

Miranda Rights - The requirement set by the United States Supreme Court (1966) that after an arrest and prior to questioning of a person suspected of a crime, the person must be told: 1) they have the right to remain silent; 2) that anything they say can and will be used against them; and 3) that they have a right to an attorney even if they cannot afford one.

Misdemeanor - A crime for which the punishment is something other than death or a penitentiary sentence, usually a fine and/or county jail time for up to one year.

Motion - A formal request usually made in writing to the judge for an order or judgment. Some motions may be filed only within certain time limits, and others may be filed at any stage of a case. Examples: continue/postpone trial to later date, modify an order, and dismiss the opposing party's case.

Motions Hearing - Proceeding of varying formality before the court to determine the specific issues raised by the motion.

***Nolo Contendere* plea** - A plea in which the defendant does not admit guilt, but does waive the right to trial and authorizes the court to impose punishment at sentencing. *Nolo contendere* is a Latin term that means "it is not contested." This type of plea is rarely entered. The motivation for entering a *nolo* plea is that unlike a plea of guilty, a *nolo* plea may not be used against the defendant as an admission of guilt in a related civil case.

Not Guilty Plea - Plea of a person who claims not to have committed a crime for which they are accused.

Oath - Swearing to tell the truth, the whole truth, and nothing but the truth. Failure to do so would subject the oath-taker to prosecution for the crime of perjury if they knowingly lie.

Objection - A lawyer's belief, stated to the judge, that something is wrong with a question posed by opposing counsel, the way opposing counsel phrases a question, or the way a witness answers a question. If the judge thinks the objection is valid, they will sustain the objection and tell the witness not to answer or tell the jury to disregard the answer. If there is no basis for the objection, the judge will overrule it and let the questioning continue. An objection may be made with regard to the admission of evidence (written reports, etc.) as well.

Order - A decision or direction made by a judicial authority. Judges issue orders in response to motions.

Parole - The conditional release of an inmate from actual penitentiary custody before the expiration of their term of imprisonment. When an inmate is paroled, they remain under the supervision of parole services. See also **Probation** and **Supervised Release**.

- ▣ In South Dakota, if imprisoned for a crime committed prior to July 1, 1996, once an inmate is eligible for parole, they see the Parole Board for a discretionary parole hearing. If denied, they are eligible for a parole hearing every 8 month.
- ▣ If imprisoned for a crime committed after July 1, 1996, and the inmate is compliant with their Individual Program Directive (IPD), agrees to conditions and has an acceptable release plan, the inmate is released without seeing the board of Pardons and Paroles at first parole date or when designated by the Parole Director. If the inmate has been non-compliant, they have a hearing with the Board. The Board may determine the inmate compliant and order release or determine the inmate non-compliant and set a date for the next discretionary parole hearing which must occur within 1-24 months.

Parole Service - The oversight division for parolees under supervision is the Department of Corrections. Staff includes parole agents who are responsible for monitoring the day-to-day activities of a parolee.

Parole Violation - The technical violation of the conditions of parole or the committing of a new crime while on parole. When this occurs, the parole agent may detain the parolee in the county jail and a preliminary hearing is convened to determine sufficient cause to detain. If detained, the person is transported to the Admission and Orientation (A&O) unit in the appropriate prison facility. A hearing with the Board of Pardons and Paroles is held within a month at which time the parole may be revoked or not revoked. If revoked, a review date is set for a subsequent discretionary hearing.

Parolee - A person who has been conditionally released from a Department of Corrections facility prior to the expiration of their sentence and remains under the supervision of the Department of Corrections.

Perjury - The crime of intentionally lying under oath administered by a notary public, county clerk or other official.

Petit Jury (or trial jury) - A group of citizens who hear the evidence presented by both sides at trial in a case and determine the facts in dispute. *Petit* is French for “small” thus distinguishing the trial jury from the larger grand jury (*grand* is French for “large”).

Plaintiff - Party who initiates a lawsuit by filing a complaint with the clerk of the court against the defendant(s) demanding damages, performance and/or court determination of rights.

Plea - A defendant's plea entered at arraignment of either "guilty" or "not guilty" or in some situations "*nolo contendere*." The defendant's plea may include an explanation for their acts such as, insanity at the time of committing the act or that the act was committed to prevent a greater harm.

Plea Bargain - The process whereby the defense attorney and the prosecutor negotiate a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts in a multi-count indictment in return for a lighter sentence than the defendant would have received if convicted of more serious charges.

Preliminary Hearing - A pre-indictment hearing at which the prosecutor must present evidence sufficient to establish probable cause to believe that an offense was committed and that the defendant committed it.

Pre-Sentencing Investigation (PSI) - An investigation completed by court services officers to assist the trial court in sentencing a criminal defendant after the person has been convicted. The investigation usually looks at prior convictions, prior arrests, employment history, education history, and family and social background.

Presumption of Innocence - A fundamental protection for a person accused of a crime that requires the jury to presume that the defendant is innocent of all charges. The judge instructs the jury that, before the defendant can be found guilty, the government must overcome the presumption of innocence and convince the jurors that the defendant is guilty beyond a reasonable doubt.

Privilege Against Self-Incrimination - A person's right to remain silent in the face of accusation or questioning by government agents. Also known as the right to remain silent, the privilege against self-incrimination is contained in the Fifth Amendment of the Constitution. People may invoke the privilege at any time, including immediately after an arrest, at the police station, before the grand jury, or at trial.

Probable Cause - The legal standard defining the amount of evidence or information needed to justify a search or an arrest. The Fourth Amendment requires that arrests and searches made by law enforcement officers be justified by probable cause. Probable cause must exist for a law enforcement officer to make an arrest without a warrant, search without a warrant or seize property in the belief the items were evidence of a crime.

Probation - A procedure whereby a defendant found guilty of a crime is released by the court without imprisonment, subject to conditions imposed by the court, under the supervision of a probation officer. While on probation the offender is required to report to a probation officer and comply with other court-imposed condition (compare to **Supervised Release**).

Prosecutor - An attorney (State's Attorney, United States Attorney, Attorney General) who is either elected or appointed to represent the people (United States, South Dakota, city or county) in matters involving criminal accusation.

Protective Custody - The confinement of a person by law enforcement officials in order to protect the person from being harmed either by themselves or some other person or situation.

Public Defender - An attorney, elected or appointed, employed by the court to represent accused persons who cannot afford to hire private attorneys.

Questioning - An interrogation of witnesses for the purpose of having them tell what they know about certain facts.

Reasonable Doubt - The standard used to determine the guilt or innocence of a person charged with a crime. To be guilty of a crime, one must be proved guilty beyond a "reasonable doubt," a doubt based on reason and common sense which arises from a fair and rational consideration of all the evidence, or the lack of evidence, in the case. See **Burden of Proof**.

Release on One's Own Recognizance - A judge allows a criminal defendant pre-trial freedom without posting bail based on past history of the defendant, roots in the community, regular employment, the recommendation of the prosecutor, the type of crime and in total likelihood of making all appearances in the court and the improbability that the defendant will commit another crime while awaiting trial.

Requisite Special Intent - An element of a crime that requires that the accused intended for the act to occur.

Restitution - Payment by an offender of money or services to the victim of a crime for losses suffered as a result of the crime. Restitution must be ordered as part of the defendant's sentence for certain crimes. It may also be ordered as a condition of probation or of supervised release.

Right to Remain Silent- See **Privilege Against Self-Incrimination**.

Ruling - Court decision on a case or any legal question.

Search Warrant - A written order issued by a judge directing certain law enforcement officers to conduct a search of specified premises for specified things or person, and to bring them before the court.

Self-Incrimination - Making statements or producing evidence that tends to prove that one is guilty of a crime.

Sentence - A judgment of the court imposing punishment upon a defendant for criminal conduct.

Sentence Hearing - A court hearing at which a defendant who is convicted of a crime is sentenced. At the hearing, the judge considers the probation officer's recommendations for sentencing, allows the attorneys to state their positions, and gives the defendant an opportunity to make a statement before imposing sentence.

State's Attorney - An elected official of a county or a designated district charged with the responsibility for prosecuting crimes.

Statute of Limitations - A law setting a fixed time period (for example, one year) after which a person cannot sue someone for an alleged injury or a government cannot prosecute someone for a crime. It prevents legal proceedings from taking place long after the injury or crime occurred, when evidence and witnesses may be hard to find.

Subpoena - A mandatory order issued under authority of a court to compel the appearance of a witness or records at a judicial proceeding, the disobedience of which may be punishable as a contempt of court.

Summons - A written order issued by a judicial officer at the time a lawsuit is filed requiring a person to appear at a certain time and place to answer charges or questions relating to a matter before the issuing authority.

Supervised Release - A criminal sentence in which the offender is placed under court supervision for a specified period of time, but is allowed to remain in the community. Like offenders placed on probation, offenders placed on supervised release are supervised by probation officers and are required to observe certain conditions of release. The court must order a term of supervised release when required to do so by statute, and when it orders a sentence of more than one year in prison.

Suspended Sentence - A portion of a person's sentence is suspended by the court and the person remains under the supervision of Parole Services. For example: A sentence of 5 years with 3 years suspended would place a person in prison up to 2 years and supervision for 3 years.

Testimony - The oral evidence given under oath by a witness in answer to questions posed by attorney at trial, at deposition or before grand juries.

Theft - Crime of taking the good of another without permission (usually secretly) with the intent of keeping them. There are two types: grand theft is a felony with a prison sentence as punishment; petty theft is usually limited to county jail time.

Time Served - Period of time a criminal defendant has been in jail often awaiting bail or awaiting trial.

Trial - The proceeding at which the government and the defense in a criminal case, produce evidence for consideration in court. The judge or a jury applies the law to the facts as it finds them and decides whether the defendant is guilty in a criminal case or which party should win in a civil case.

Trial Court - First court responsible to consider a case.

Unit Team - A team of people assigned to an inmate of the state prison system upon receipt of the housing assignment to work with the inmate to address any problems, answer questions, etc. The team typically consists of a Unit Manager, Case Manager and a Unit Coordinator.

Verdict - The decision of a jury which must be accepted by the judge to be final.

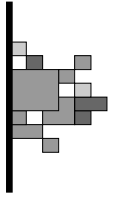
Waive - The act of knowingly, intentionally, and voluntarily giving up a right. For example, a defendant who pleads guilty waives the right to a jury trial.

Warrantless Arrest - An arrest made without a warrant.

Witness - A person called upon by either side in a lawsuit to give testimony before the court.

Chapter 5

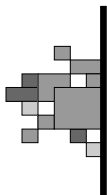
Resources



This chapter is included for the purpose of assisting staff from the criminal justice and human services systems to more easily access available services, assistance, and direction when both systems are relating to a person with a developmental disability.

The resources are listed in two sections: **Human Services** and **Criminal Justice** and include those agencies, organizations, and professions that may provide the greatest assistance in coordination activities (including the Individual Justice Planning process) to meet the needs of persons with developmental disabilities involved with the criminal justice system.

The resources listed are primarily services within South Dakota. Phone numbers are included and websites referenced as available. A brief description of most of the agencies/organizations listed within this resource listing can be found in **Stage 1 - Overview of Agencies/Organizations Within the Two Systems**. At any stage in the criminal justice system, the listed agencies/organizations may or may not be appropriate participants in relating to the person with a developmental disability. We encourage the users of this handbook to, when in doubt, contact the agency or organization to inquire as to their possible participation.



Human Services Resources

 State Agencies		
Department of Human Services www.state.sd.us/dhs	Pierre TTY	605-773-5990 605-773-5483
Division of Alcohol & Drug Abuse www.state.sd.us/dhs/ada	Pierre	605-773-3123
Division of Developmental Disabilities www.state.sd.us/dhs/dd	Pierre	605-773-3438
Division of Mental Health www.state.sd.us/dhs/dmh	Pierre	605-773-5991
Division of Rehabilitation Services (DRS) www.state.sd.us/dhs/drs	Pierre	605-773-3195
Division of Services to the Blind & Visually Impaired www.state.sd.us/dhs/sbvi	Pierre	605-773-4644

Department of Human Services - Continued		
Guardianship Program www.state.sd.us/dhs/Guardianship/Guardianshipindex.htm	Pierre	605-773-5990
South Dakota Developmental Center (SDDC) www.state.sd.us/dhs/redfield/page1.htm	Redfield	605-472-2400
South Dakota Human Services Center www.state.sd.us/dhs/mcn	Yankton	605-668-3100


Department of Social Services www.state.sd.us/social	Pierre	605-773-3165
Adult Services & Aging www.state.sd.us/social/asa	Pierre Toll-free	605-773-3656 1-866-854-5465
Crime Victims Compensation www.state.sd.us/social/CVC/index.htm	Pierre Toll-free	605-773-6317 1-800-696-9476
Domestic Abuse Program www.state.sd.us/social/ASA/domesticabuse/index.htm	Pierre	605-773-3656
Energy Assistance & Weatherization www.state.sd.us/social/ENERGY/index.htm	Toll-Free	1-800-233-8503
Food Stamps www.state.sd.us/social/foodstamps	Pierre	605-773-3493
Medical Eligibility www.state.sd.us/social/MedElig/index.htm	Pierre	605-773-4678
Medical Services www.state.sd.us/social/Medical/index.htm	Pierre	605-773-3495
Rx Access (Medication Assistance) www.state.sd.us/social/ASA/RxAccess/index.htm	Toll-Free	1-866-854-5465
Sales Tax on Food Refund Program www.state.sd.us/social/SalesTaxOnFoodRefund/index.htm	Pierre Toll-Free	605-773-4105 1-866-674-0543
Temporary Assistance to Needy Families (TANF) www.state.sd.us/social/TANF/index.htm	Pierre	605-773-4678

Department of Health www.state.sd.us/doh	Pierre SD Toll-Free	605-773-3361 1-800-738-2301
Community Health & Public Health Alliance Offices www.state.sd.us/doh/address/comm.htm	Statewide	

Department of Education www.state.sd.us/deca	Pierre	605-773-3426
Office of Educational Services & Support, Special Education Programs www.state.sd.us/deca/special	Pierre	605-773-3678
Office of Career & Technical Education www.state.sd.us/deca/dwcp	Pierre	605-773-4747
South Dakota Educational Directory www.state.sd.us/deca/Finance/Data/edudir	Statewide	

Department of Labor www.state.sd.us/dol	Pierre	605-773-3101
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South Dakota Career Centers www.state.sd.us/dol/sdjob/direct.htm	Statewide	
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 Federal Agencies		
Aberdeen Indian Health Service www.ihs.gov/FacilitiesServices/AreaOffices/Aberdeen	Regional	605-226-7581

Bureau of Indian Affairs www.doi.gov/bureau-indian-affairs.html	National	202-208-3710
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Online Resource for Disability Information www.disabilityinfo.gov	National	
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Social Security Administration (SSA) www.ssa.gov/disability	National	1-800-772-1213
SSA Online Office Locator http://s3abaca.ssa.gov/pro/foi/foi-home.html	National	
Social Security Administration	Sioux Falls	605-330-4634

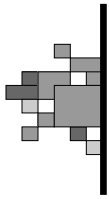
US Government Official Web Portal www.firstgov.gov	National	
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 Local Government and Private Non-Profit Services		
Adjustment Training Centers (alphabetical by location)		
Ability Building Service, Inc.	Yankton	605-665-2518
ATC, Inc.	Aberdeen	605-229-0263
ADVANCE	Brookings	605-692-7852
Dakota Milestones www.chamberlainatc.com	Chamberlain	605-734-5542
Huron Area Center for Independence	Huron	605-352-5698
LIVE Center, Inc.	Lemmon	605-374-3742
ECCO, Inc.	Madison	605-256-6628
LifeQuest www.lifequestsd.com	Mitchell	605-996-2032
OAHE, Inc. www.oaheinc.com	Pierre	605-224-4501
Black Hills Workshop & Training Center www.bhws.com	Rapid City	605-343-4550
DakotAbilities www.dakotabilities.com	Sioux Falls	605-334-4220
South Dakota Achieve www.siouxvocational.org	Sioux Falls	605-336-7100
South Dakota Behavioral Health Care, Education & Integration Services www.southeasternbh.org	Sioux Falls	605-335-8956
Volunteers of America - Dakotas, Turning Point www.voa-dakotas.org	Sioux Falls	605-367-7680
Northern Hills Training Center www.nhtc.org	Spearfish	605-642-2785
Black Hills Special Services Cooperative www.bhssc.org	Sturgis & Hot Springs	605-347-4467
SESDAC	Vermillion	605-624-4419
ATCO Enterprises, Inc www.humanserviceagency.org/aboutATCO.htm	Watertown	605-886-8048
Community Connections	Winner	605-842-1708

Community Mental Health Center (alphabetical by location)		
Northeastern Mental Health Center www.nemhc.org	Aberdeen	605-224-1014
East Central MH/CD Center	Brookings	605-697-2860
Community Counseling Services www.ccs-sd.org	Huron	605-352-8596
Three Rivers MH/CD Center	Lemmon	605-374-3862
Dakota Counseling Institute	Mitchell	605-996-9686
Capitol Area Counseling Services www.cacsnet.org	Pierre	605-224-5811
Behavior Management Systems, Inc. www.behaviormanagement.org	Rapid City	605-343-7262
Southeastern Behavioral Healthcare www.southeasternbh.org	Sioux Falls	605-336-0510
Human Service Agency www.humanserviceagency.org	Watertown	605-886-0123
Southern Plains Behavioral Health Services	Winner	605-842-1465
Lewis & Clark Behavioral Health Center	Yankton	605-665-4606

Independent Living Centers (alphabetical by location) www.state.sd.us/dhs/drs/il/		
Opportunities for Independent Living	Aberdeen	605-626-2976
Opportunities for Independent Living	Huron TTY Toll-Free	605-353-6710 605-626-2977 1-800-406-2649
Prairie Freedom Center of Madison	Madison Voice & TTY	605-256-5070
Prairie Freedom Center of Mitchell	Mitchell Voice & TTY	605-995-8141
Tateya Topa Ho	Pine Ridge	605-867-7038
Western Resources for Disabled Independence	Rapid City National Toll-Free	605-718-1930 1-888-434-4943
Prairie Freedom Center for Independent Living	Sioux Falls Voice & TTY	605-367-5630 1-800-947-3770
Communication Services for the Deaf	Statewide	605-367-5759

Independent Living Centers - Continued		
Opportunities for Independent Living	Watertown TTY Toll-Free	605-882-5249 605-626-2977 1-800-406-2649
Tateya Topa Ho	Winner	605-842-3977
Prairie Freedom Center of Yankton	Yankton Voice & TTY	605-668-2940
Center for Disabilities, Sanford School of Medicine at The University of South Dakota www.usd.edu/cd	Sioux Falls Toll-Free Voice & TTY	605-357-1439 1-800-658-3080
DakotaLink/Assistive Technology www.dakotalink.tie.net	Statewide	1-800-645-0673
Relay South Dakota www.relaysouthdakota.com	Statewide National	711 1-800-877-1113
South Dakota Advocacy Services www.sdadvocacy.com	Pierre Toll-Free - SD only V/TTY	605-224-8492 1-800-658-4782
South Dakota Association of Community Based Services	Pierre Toll-Free	605-224-0752 1-800-560-5698
South Dakota Coalition of Citizens with Disabilities http://sd-ccd.org	Pierre Toll-Free	605-945-2207 1-800-210-0143
South Dakota Council on Developmental Disabilities www.state.sd.us/dhs/ddc	Pierre	605-773-6369
South Dakota Guardianship Program	Pierre	605-224-9647
The Council on Quality and Leadership www.thecouncil.org	National	410-583-0060



Criminal Justice Resources

South Dakota Criminal Justice Directory

<http://dci.sd.gov/administration/sac/publications>

Located on the South Dakota Attorney General's website, this directory contains listings of State Law Enforcement, State's Attorneys, Department of Public Safety including South Dakota Highway Patrol, County Sheriffs, Chiefs of Police, Department of Game, Fish & Parks, Other State Regulatory Agencies, County Coroners, Federal Law Enforcement Agencies including the Bureau of Indian Affairs, Federal Bureau of Investigation, Federal Public Defenders, Tribal Law Enforcement, United States Attorney's Offices, United States Federal Probation Offices, and United States Marshal's Office, Federal Court System, State Court System, Clerk of Courts, Court Services Officers, and State Corrections.

A Guide to Your Courts

www.sdjudicial.com/downloads/bluebook.pdf

This guide is found on the Unified Judicial Systems website under the category of "Structure" and contains information on personnel, the Supreme Court, Judicial Circuits, Juries and Attorneys, Criminal Cases, Civil Cases, Appellate Procedure, Related Supreme Court Activities and Other Courts located in South Dakota.

How the Courts Work

www.abanet.org/publiced/courts/home.html

The American Bar Association website in their Public Resources section has many articles and publications. "How the Courts Work" contains detailed information on each step involved in a legal proceeding or a trial.

 State Agencies		
Department of Corrections www.state.sd.us/corrections/corrections.html	Pierre	605-773-3478

Adult Corrections www.state.sd.us/corrections/adult_corrections.htm		
South Dakota Women's Prison, Solem Public Safety Center	Pierre	605-773-5368
Rapid City Corrections	Rapid City	605-394-5294
Redfield Trusty Unit	Redfield	605-472-4424
Jameson Annex	Sioux Falls	605-367-5120
South Dakota Penitentiary	Sioux Falls	605-367-5051
Mike Durfee State Prison	Springfield	605-369-2201
Yankton Trusty Unit	Yankton	605-668-3355

Juvenile Corrections www.state.sd.us/corrections/juvenile_corrections.htm		
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Board of Pardons & Paroles www.state.sd.us/corrections/parole.htm	Sioux Falls	605-367-5040
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Parole Services www.state.sd.us/corrections/parole_service_offices.htm		
Parole Services Field Office	Aberdeen	605-626-2268
Parole Services Filed Office	Mitchell	605-995-8155
Parole Services Field Office	Rapid City	605-394-2206
Parole Services Field Office	Sioux Falls	605-367-5780
Parole Services Field Office	Yankton	605-668-3200
Parole Services Field Office	Brookings	605-668-6780
Parole Services Field Office	Huron	605-353-7336
Parole Services Field Office	Pierre	605-773-6752
Parole Services Field Office	Spearfish	605-642-6853
Parole Services Field Office	Watertown	605-882-5002


South Dakota Attorney General www.state.sd.us/attorney	Pierre	605-773-3215
Division of Criminal Investigation http://dci.sd.gov	Pierre	605-773-3331
South Dakota Highway Patrol http://hp.state.sd.us/greeting.htm	Pierre	605-773-3105
District 1 Headquarters	Aberdeen	605-626-2286
District 2 Headquarters	Sioux Falls	605-367-5700
District 3 Headquarters	Rapid City	605-394-2286
Unified Judicial System www.sdjudicial.com	Pierre	605-773-3511
South Dakota Supreme Court www.sdjudicial.com/index.asp?title=structureindex&category=structure&nav=1	Pierre	605-773-3511
Circuit Courts (alphabetical by location)		
Fifth Judicial Circuit	Aberdeen	605-626-2450
First Judicial Circuit	Armour	605-724-2145
Fourth Judicial Circuit	Belle Fourche	605-892-2516
Third Judicial Circuit	Brookings	605-688-4202
Fourth Judicial Circuit	Deadwood	605-578-3613
First Judicial Circuit	Elk Point	605-356-3687
Sixth Judicial Circuit	Fort Pierre	605-223-7777
Third Judicial Circuit	Huron	605-353-7165
Third Judicial Circuit	Madison	605-256-5285
First Judicial Circuit	Mitchell	605-995-8102
Sixth Judicial Circuit	Pierre	605-773-3970
First Judicial Circuit	Plankinton	605-942-7180
Seventh Judicial Circuit	Rapid City	605-394-2571
Fifth Judicial Court	Selby	605-649-7628

Circuit Courts - Continued		
Second Judicial Circuit	Sioux Falls	605-367-5920
Fourth Judicial Circuit	Sturgis	605-347-4413
Third Judicial Circuit	Watertown	605-882-5090
Fifth Judicial Circuit	Webster	605-345-3771
Sixth Judicial Circuit	Winner	605-842-3856
First Judicial Circuit	Yankton	605-668-3095

Court Services Offices (alphabetical by location)		
Fifth Judicial Circuit	Aberdeen	605-626-2275
Fourth Judicial Circuit	Belle Fourche	605-892-3505
Third Judicial Circuit	Brookings	605-688-4208
Second Judicial Circuit	Canton	605-987-2801
First Judicial Circuit	Chamberlain	605-734-4585
Fourth Judicial Circuit	Deadwood	605-578-2043
Third Judicial Circuit	Huron	605-353-7161
Sixth Judicial Circuit	Kadoka	605-837-2123
First Judicial Circuit	Lake Andes	605-487-7102
Third Judicial Circuit	Madison	605-245-4645
First Judicial Circuit	Mitchell	605-995-8100
Sixth Judicial Circuit	Murdo	605-669-2641
First Judicial Circuit	Parker	605-297-4097
Sixth Judicial Circuit	Pierre	605-773-3874
Seventh Judicial Circuit	Rapid City	605-394-2595
Second Judicial Circuit	Sioux Falls	605-367-5930
Fifth Judicial Circuit	Selby	605-649-7323
Fifth Judicial Circuit	Sisseton	605-698-7528
Fourth Judicial Circuit	Sturgis	605-347-4412
First Judicial Circuit	Vermillion	605-677-6485
Third Judicial Circuit	Watertown	605-882-5110

Court Services Offices - Continued		
Sixth Judicial Circuit	Winner	605-842-3551
First Judicial Circuit	Yankton	605-668-3075

Public Defenders Offices		
Lawrence County	Deadwood	605-578-3000
Minnehaha County	Sioux Falls	605-367-4242
Pennington County	Rapid City	605-394-2181

 Federal Agencies		
Bureau of Indian Affairs (BIA) www.doi.gov/bureau-indian-affairs.html		202-208-3710
BIA Law Enforcement Services	Aberdeen	605-226-7347
BIA Law Enforcement Services	Rapid City	605-343-0402

Federal Judicial Center www.fjc.gov/federal/courts.nsf		
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United States Supreme Court www.supremecourtus.gov		202-479-3211
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Administrative Office of the United States Courts www.uscourts.gov/adminoff.html Publication, "Understanding the Federal Courts," downloadable/viewable as a PDF document.		202-502-2600
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United States District Courts in South Dakota www.sdd.uscourts.gov		
US District Court	Aberdeen	605-226-7280
US District Court	Rapid City	605-343-1227 or 605-343-7784 or 605-343-3744
US District Court	Sioux Falls	605-330-4505

United States Court of Appeals for the Eight Circuit www.ca8.uscourts.gov/index.html	Sioux Falls	605-330-4411
United States Department of Justice www.usdoj.gov		202-514-2000
Alcohol, Tobacco, Firearms and Explosives www.atf.gov		
Attorney General's Office www.usdoj.gov/ag/index.html		
Criminal Division of the US Department of Justice www.usdoj.gov/criminal		
Office of Justice Programs www.ojp.usdoj.gov (Juvenile Justice, Victims of Crime and Violence Against Women and more)		
Office of Tribal Justice www.usdoj.gov/otj/		202-514-8812
Federal Bureau of Investigation (FBI) www.fbi.gov/		
FBI - Minnesota Field Office www.minneapolis.fbi.gov/	Minneapolis	612-376-3200
Office for Victim Assistance www.fbi.gov/hq/cid/victimassist/home.htm		
Community Outreach Program www.fbi.gov/hq/ood/opca/outreach/copintro.htm		
Federal Bureau of Investigation	Aberdeen	605-225-3084
Federal Bureau of Investigation	Pierre	605-224-1331
Federal Bureau of Investigation	Rapid City	605-334-9632
Federal Bureau of Investigation	Sioux Falls	605-334-6881

Federal Bureau of Prisons www.bop.gov Publication, “Legal Resource Guide to the Federal Bureau of Prisons 2004,” downloadable/viewable as PDF document		202-307-3198
Federal Prison Camp - Yankton	Yankton	605-665-3262

United States Parole Commission www.usdoj.gov/uspc		301-492-5990
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United States Attorney’s Office www.usdoj.gov/usao		
United States Attorney’s Office	Pierre	605-224-5402
United States Attorney’s Office	Sioux Falls	605-330-4400
United States Attorney’s Office	Rapid City	605-342-7822

United States Marshal’s Office www.usdoj.gov/marshals		
United States Marshal’s Office	Aberdeen	605-226-7264
United States Marshal’s Office	Pierre	605-224-5402
United States Marshal’s Office	Rapid City	605-342-7822
United States Marshal’s Office www.usmarshals.gov/district/sd/index.html	Sioux Falls	605-330-4351

Federal Probation Offices in South Dakota		
Federal Probation Office	Aberdeen	605-226-7591
Federal Probation Office	Pierre	605-224-1210
Federal Probation Office	Rapid City	605-342-4240
Federal Probation Office	Sioux Falls	605-330-4437

Federal Public Defender’s Offices in South Dakota		
Federal Public Defender’s Office	Pierre	605-224-0009
Federal Public Defender’s Office	Rapid City	605-343-5110
Federal Public Defender’s Office	Sioux Falls	605-330-4489

National Tribal Justice Resource Center

www.tribalresourcecenter.org

The National Tribal Justice Resource Center is dedicated to tribal justice systems, personnel and tribal law. The Resource Center is the central national clearinghouse of information for Native American and Alaska Native tribal courts, providing both technical assistance and resources for the development and enhancement of tribal justice system personnel.


Tribal Court Directory

www.tribalresourcecenter.org/tribalcourts/directory/default.asp

The National Tribal Justice Resource Center website includes a directory of links to the various tribal courts and justice systems from across the nation. The links are listed so that the public and other tribal courts can see what it is tribal justice systems do, how they operate and function. At the same time, this is a public service provided to those who utilize those tribal justice systems, who need information about or who are seeking to contact a particular court.

Tribal Courts (alphabetical by location)		
Sisseton Wahpeton Sioux Tribal Court	Agency Village	605-339-1931
Cheyenne River Sioux Tribal Court www.sioux.org	Eagle Butte	605-964-2996
Flandreau Santee Sioux Tribal Court	Flandreau	605-997-3593
Crow Creek Sioux Tribal Court	Fort Thompson	605-245-2325
Standing Rock Sioux Tribal Court www.standingrock.org	Fort Yates, North Dakota	701-854-3807
Lower Brule Sioux Tribal Court	Lower Brule	605-473-5528
Oglala Sioux Tribal Court	Pine Ridge	605-867-5151
Rosebud Sioux Tribal Court www.rosebudsiouxtribe-nsn.gov	Rosebud	605-747-2266
Yankton Sioux Tribal Court	Wagner	605-384-5578

Tribal Law Enforcement (alphabetical by location)		
Sisseton Agency	Agency Village	605-698-7661
Cheyenne River Agency	Eagle Butte	605-964-4567
Flandreau Santee Sioux Tribe	Flandreau	605-997-3378
Crow Creek Agency	Fort Thompson	605-245-2159
Standing Rock Agency	Fort Yates, North Dakota	701-854-7241
Lower Brule Agency	Lower Brule	605-473-5224
Pine Ridge Agency	Pine Ridge	605-867-5141
Rosebud Agency	Rosebud	605-747-2266
Yankton Agency	Wagner	605-384-5691

 Local Government & Private Non-Profit Services		
American Bar Association www.abanet.org		

American Correctional Association www.corrections.com/aca/index.html

American Jail Association Www.corrections.com/aja/index.html

Dakota Plains Legal Services www.dpls.org		
Legal Aid Office	Eagle Butte	605-964-2175
Legal Aid Office	Fort Thompson	605-245-2341
Legal Aid Office	Fort Yates, North Dakota	701-854-7204
Legal Aid Office	Mission	605-856-4444
Legal Aid Office	Pine Ridge	605-867-1020
Legal Aid Office	Rapid City	605-342-7174
Legal Aid Office	Sisseton	605-698-3971

East River Legal Services - Legal Aid Office	Sioux Falls	605-336-9230
National Association for Victim Assistance www.try-nova.org		
National Institute of Corrections www.nicic.org		
National Criminal Justice Reference Service www.ncjrs.org		
Pennington County Legal Services - Legal Aid Office	Rapid City	605-342-7171
South Dakota Peace Officer's Association, Inc. www.southdakotapoa.com	Aberdeen	605-229-1555
South Dakota Police Chiefs Association www.sdmunicipalleague.org	Pierre	605-224-8654
South Dakota Sheriffs Association	Rapid City	605-355-3071
South Dakota States Attorneys Association	Pierre	605-224-0461
South Dakota Trial Lawyers Association www.sdtla.com	Pierre	605-224-9292
State Bar Association www.sdbar.org	Pierre	605-224-7554